

A
DIGEST OF THE LAW
RESPECTING

5 K d
10. L. a

County Elections.

CONTAINING
THE DUTY AND AUTHORITY OF
THE HIGH SHERIFF,
FROM THE RECEIPT OF THE WRIT TO THE RETURN
THEREOF;

AND
THE MODE OF PROCEEDING AT
COUNTY ELECTIONS,
WHETHER DETERMINED BY THE VIEW, THE POLL,
OR THE SCRUTINY.

TOGETHER WITH,
THE QUALIFICATIONS, AND
PERSONAL AND OTHER DISQUALIFICATIONS,
OF THE VOTERS.

By SAMUEL HEYWOOD, ESQUIRE,
OF THE INNER TEMPLE.

L O N D O N:

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P R E F A C E.

MORE than twelve years have elapsed since I formed the design of making *a general digest of the law concerning elections*, and began to collect materials. Whether it may ever be compleated depends, in some degree, upon the reception this volume meets with from the public, but more upon other circumstances, equally out of my controul. It was my intention to have prefixed, by way of introduction, an historical inquiry into the tenures and situation of the freeholders of England, and the suitors at the county court, from the earliest traces of their history, in the times of our Saxon ancestors, to the passing of that statute (8 Hen. VI. c. 7.) which introduced the present system of representation for counties; but it would have swelled this publication to an immoderate size, for which reason I have omitted it, and also some observations on the *writ of summons*, its *issuing*, *carriage*, and

return. My object now is confined to the qualifications and disqualifications of the electors, and the duty and authority of the sheriff from the instant he receives the writ, till the election is concluded, and he is called upon to make the return. As it is not impossible that my original plan may be resumed at some future period, free use has been made of the cases on borough elections, to elucidate the general law, and to establish the principles on which it must be founded. Hence the whole chapter upon *the personal disqualifications of voters*, and great part of that upon the *proceedings of the sheriff at the election*, particularly concerning *scrutinies*, will be found equally useful at elections for boroughs as for counties.

The outline of the work is simply this :—under each division I have given the history, as well as the present state of the law, and in general the modern practice will be found at the conclusion of each respective head. Feeling no prejudice in support of any established system, I have paid little regard to the commentaries of others; but have resorted, with unremitting industry, to the original authorities, and endeavoured to deduce

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the law from the fountain-head. I have, however, acted fairly by my readers, and, upon all occasions, given them the authorities *on both sides*. It is for them to judge how far my observations are well founded; they may dispute the conclusions I have drawn from the premises here laid down, or take that for the rule which I have considered as the exception. At all events, I flatter myself that this publication, as a mere *repertory of cases*, may save some trouble to the profession, be a convenient companion at a poll, and perhaps not wholly without its use on the table of a committee. The statutes cited are generally given in the very words of the statute-book, and the cases carefully examined with the original Journals and Reports. I am sensible that the accuracy of such a work must stamp its value in the public estimation.

I take this opportunity of expressing my acknowledgments to the profession in general, for the liberality with which every individual to whom I have had recourse has favoured me with information. But to the second volume of Mr. Luders's cases on controverted elections, I have been under peculiar obligations. It contains a
report

report of the only case of a county election (Bedfordshire) which has yet been fully investigated by a select committee appointed under Mr. Grenville's Act. And the number of important points, particularly on the assessment of freeholders, there agitated, and the accuracy with which they are reported, render it a most valuable acquisition to the code of election law.

Many cases that occurred before the Bedfordshire committee are cited by the names of the persons whose votes were in dispute. The resolves of the Gloucestershire committee, in the year 1777, are referred to by the word "Gloucester," in the margin; and it is hardly necessary to add, that "1 Dougl. 2 Dougl." &c. signify the different volumes of Mr. Douglas's excellent reports of cases on controverted elections.

It is proper to apprise my readers, that the bill alluded to in the note at page 287, as then depending in parliament, after having passed the House of Commons, was lost upon a division in the House of Lords, and of course the 25 Geo. III. c. 84, has undergone no alteration. The inconveniences

inconveniences to be apprehended from this act are certainly not very light ones. The duration of polls is limited to fifteen days; yet, at most popular elections, it is left in the power of any candidate, or his friends, by insisting on the imposition of the several oaths, totally to preclude a possibility of taking all the votes within that time. At the expiration, however, of fifteen days the return must be made: if the presiding officer returns the candidate who has a majority on the unfinished poll, it can hardly be supposed that he will be allowed to sit, and if the election is avoided the consequence is a fresh scene of riot and confusion, a new poll protracted to the last moment, and another void election. In this way a populous district may remain unrepresented during a whole parliament, unless, wearied out with trouble and expence, some of the candidates retire, and the majority of electors yield to the perseverance of their less numerous opponents.

The act of the 20th Geo. III. c. 17. may be seen at large at page 113; but, the form of assessment prescribed by that act, and thereunto annexed, denoting that the names both of the proprietor and of the occupier ought to be specified—

cified—and doubts having arisen, whether, if such form was not strictly pursued, the suffrage of the person claiming to vote was admissible—an act has passed in the session of parliament just concluded (30th Geo. III. c.) which received the royal assent on the very day of prorogation. This last-mentioned statute, reciting the 20th Geo. III. c. 17. and the 22d Geo. III. c. 31. concerning the voters for Cricklade, and that doubts had arisen, whether the form of the assentment to the first-recited act annexed ought not in all cases to be strictly observed, enacts *,

“ That nothing in the said acts contained shall
 “ extend, or be construed to extend, to prevent
 “ any person from voting at any election of a
 “ knight or knights of a shire to serve in parlia-
 “ ment, within that part of Great Britain called
 “ England, or the principality of Wales, or at
 “ any election of a burghers or burghesses to serve
 “ in parliament for the borough of Cricklade,
 “ in the county of Wilts, for or in respect of

* This act is taken from the copies printed by order both of the House of Lords and House of Commons. It originated in the latter, and was sent back (as I am informed) without amendments.

“ any

“ any messuages, lands, or tenements, which
“ have been charged or assessed, for six calendar
“ months next before such election, towards
“ some aid granted or to be granted to his
“ Majesty, his heirs or successors, by a land-
“ tax, in the name of the person claiming to
“ vote, or for or in respect of any messuages,
“ lands, or tenements, to which the person so
“ claiming to vote shall have become entitled
“ by descent, marriage, marriage-settlement,
“ devise, promotion to any benefice in a church,
“ or promotion to any office, within twelve
“ calendar months next before such election,
“ and which messuages, lands, or tenements
“ shall have been within two years next before
“ such election charged or assessed to the land-
“ tax, in the name of the person or persons by
“ or through whom such person so claiming to
“ vote shall derive his title to such messuages,
“ lands, or tenements, or of some predecessor
“ of such person so claiming to vote, although
“ the name of the tenant or tenants actually
“ occupying such messuages, lands, or tene-
“ ments, shall not be inserted in such assess-
a “ ment,

“ ment, according to the form of assessment to
 “ the said first-recited act annexed.

“ And that nothing in the said acts contained
 “ shall extend, or be construed to extend, to
 “ prevent any person from voting at any such
 “ election of a knight or knights of any shire,
 “ or of a burghs or burghesses for the said bo-
 “ rough of Cricklade, for or in respect of any
 “ messuages, lands, or tenements, which have
 “ been charged or assessed, for six calendar
 “ months next before such election, towards
 “ some aid granted or to be granted to his
 “ Majesty, his heirs or successors, by a land-
 “ tax, in the name of a tenant or tenants actu-
 “ ally occupying the same at the time of such
 “ assessment being made, although the name
 “ of the person so claiming to vote, or the
 “ person or persons by or through whom
 “ such person so claiming to vote derives his
 “ title, or of the predecessor of the person so
 “ claiming to vote, shall not be inserted in the
 “ assessment, according to the form of the as-
 “ sessment to the said first-recited act annex-
 “ ed.”

Post, pa. 126.

In the Bedfordshire committee it was resolved,
 that

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that the schedule above-mentioned need not be strictly pursued in the assessment of voters; and with respect to the particular point now settled *Post*, pa. 132. by this act, the Bedfordshire committee had adopted one rule of construction of the assessment act, and the Buckinghamshire and Cricklade committees another.

Inner Temple,
June 11, 1790.

E R R A T A.

- Page 2, line 4—for *gentlemen*, read *great men*.
 — 10, — 20—after *Second*, insert (18 *Geo. II. c. 18 f. 11.*)
 — 11, — 17—after *f.* insert 7.
 — 37, — 8, 9—for *to have*, read *bad*.
 — 53, — 17—for *doto*, read *dote*.
 — 63, — 18—after *-acted*, insert *by 7 & 8 W. III. c. 25. f. 7.*
 — 72, — 17—after *disputed*, insert *but*.
 — 77, — 24, 25—for *that act*, read *the act of George II.*
 — 96, — 25—after *By*, insert 18 *Geo. II. c. 18.*
 — 124, — 25—for 700, read 481.
 — *ibid.* — 27—for *nearly 400*, read 440.
 — 195, — 15—for 1698, read 1695.
 — 212, — 7—dele *in the same year*.
 — 232, — 19—after 24, insert *f. 9.*
 — 264, — 8—after *poll*, insert *for a county*.
 — 267, — 15—dele *to*.
 — 271, — 7, 8.—for *will not*, read *has been held not to*.
 — 347, — 17—for 1780, read 1777.

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F O R M
OF THE
WRIT OF SUMMONS.

As the Writ of Summons will be often referred to in the subsequent pages, I have inserted it here at length, as given by Mr. Douglas, from the original in the office of the Clerk of the Crown. <sup>1 Dougls
P. 448.</sup>

“ G E O R G E the Third, by the grace of ^{Writ of Sum-}
“ God, of Great Britain, France, and ^{mons.}
“ Ireland, King, Defender of the Faith, and so
“ forth, to the sheriff of the county of Oxford,
“ greeting. Whereas, by the advice and assent
“ of our council, for certain arduous and urgent
“ affairs concerning us, the state, and defence
“ of our kingdom of Great Britain, and the
“ church, we have ordered a certain parliament

B

to

Writ of Sum-
mons.

“ to be holden at our city of Westminster, on
 “ the twenty-ninth day of November next en-
 “ suing, and there to treat and have conference
 “ with the prelates, gentlemen, and peers of our
 “ realm; we command and strictly injoin you,
 “ that (*proclamation being made of the day and*
 “ *place aforesaid, in your next county court to*
 “ *be holden after the receipt of this our writ*) two
 “ knights of the most fit and discreet of the said
 “ county, girt with swords, and of the university
 “ of Oxford two burgessees, and of every city of
 “ that county, two citizens, and of every bo-
 “ rough in the same county, two burgessees, of
 “ the most sufficient and discreet, *freely and indif-*
 “ *ferently, by those who at such proclamation shall*
 “ *be present, according to the form of the statutes*
 “ *in that case made and provided, you cause to be*
 “ *electd*; and the names of those knights, citi-
 “ zens, and burgessees so to be electd (whether
 “ they be present or absent) you cause to be in-
 “ serted in certain indentures, to be thereupon
 “ made between you and those who shall be pre-
 “ sent at such election; and them, at the day and
 “ place aforesaid, you cause to come, in such
 “ manner that the said knights, for themselves
 “ and the commonalty of the same county, and
 “ the said citizens and burgessees, for themselves
 “ and the commonalty of the said university,
 “ cities, and boroughs respectively, may have
 “ from

Form of the Writ of Summons.

3

“ from them full and sufficient power to do and
“ consent to those things which then and there,
“ by the common council of our said kingdom
“ (by the blessing of God) shall happen to be or-
“ dained upon the aforesaid affairs, so that for
“ want of such power, or through an improvi-
“ dent election of the said knights, citizens, or
“ burghesses, the aforesaid affairs may in no wise
“ remain unfinished; willing nevertheless, that
“ neither you, nor any other sheriff of this our
“ said kingdom, be in anywise elected, and
“ *that the election in your full county so to be made*
“ *distinctly and openly, under your seal, and the*
“ *seals of those who shall be present at such elec-*
“ *tion, you do certify to us in our chancery, at the*
“ day and place aforesaid, without delay, re-
“ mitting to us one part of the aforesaid inden-
“ tures annexed to these presents, together with
“ this writ. Witness ourself at Westminster, the
“ first day of October, in the fourteenth year of
“ our reign.”

Writ of Sum-
mons.

The writs of summons are all in this form, except that in those to the sheriffs of Oxfordshire and Cambridgeshire *only* are the clauses for the election of burghesses for the respective universities.

C H A P. I.

OF THE SHERIFF'S DUTY AFTER RECEIPT OF
THE WRIT, AND BEFORE THE ELECTION.

Notice of
Election, &c.

Sheriff must
indorse re-
ceipt.

Sheriff mi-
nisterial.

1 Whitel.

P. 332.

THE writ of summons being delivered to the sheriff, it is required by the statute of 7 and 8 Will. III. c. 25. s. 1. that "he shall, upon the back thereof, indorse the day he received the same." In the execution of the king's commands, thus notified to him under the great seal, he acts but as a ministerial officer; he is not to judge of the legality or illegality of the writ, the great seal is a sufficient warrant, and obliges him to the execution of it; "nor is he liable to be questioned for the same, although the writ be not according to law, whereof he is not the judge."

As the attendance of the suitors was formerly rigorously exacted, they would be assembled of course at every county court, and the sheriff was not bound to give any previous notice of the
business

business that might come before them. Therefore all that the writ required was, that he should, in the next county court to be holden after his receipt of the writ, make the proclamation therein mentioned, and proceed to the election. It appears from Whitelocke, that it had been made a question, whether any previous notice was necessary; and he shews from the words of the writ, that the proclamation was to be, not of the day and place of election, but of the day and place of holding the parliament. But after the suitors were grown remiss in the performance of their services, and the county courts were deserted by the higher ranks of freeholders, it became usual for the sheriff (or rather his under-sheriff), when circumstances permitted, to make out his warrant to the bailiff of every hundred, for summoning the freeholders within his district to attend at the next county court, to proceed to the election; or, if any quarter sessions of the peace, or other public meeting, fell between the receipt of the writ and the next county court, the sheriff might there give public notice to the freeholders.

Notice of
Election, &c.

1 Whitel.
P. 354.

Dalton's
Sheriff,
P. 331.

The writ requires the election to be made "in
" your next county court * to be holden after
" this our writ," it might therefore happen
that

* The county court is to be held, in every county, upon a day certain in every month, by the statute of 9 Hen. III. c. 35.

Notice of
Election, &c.

1 Whitel.
p. 355.

that the election might come on so soon, after the receipt of the writ, as to render it impossible for the sheriff to give any notice whatever to the freeholders, except that of the proclamation before-mentioned, made at the county court in which the election took place. And, until the statute of the 7 and 8 W. III. c. 25. s. 3. which will be cited presently, was passed, if the sheriff received the writ on *the same day* on which he was to hold a county court, he was bound even at that court to proceed to the election. In the county of Essex, in Charles the II^d's reign, it happened that the writ for choosing knights of the shire came to the sheriff during the assizes, on the day of holding the county court, and, by advice of the judges, the election was made without any previous proclamation or adjournment.

Dewes's
Journ. p. 393.

County of Norfolk, 3d November 1586.—
The speaker informed the House, that the queen thought it impertinent in them to meddle with the election and return of this county, and that she had appointed the lord chancellor and

Dalton, p.
405.

So in Wales, by 34 Hen. VIII. c. 26. and the county palatine of Chester, by 33 H. VIII. c. 13. The reason of their being held every month, and on a day certain, was, that the writs of exigent might be proclaimed and read there.

the

the judges to determine it. On the 9th, notwithstanding this, the committee made their report. It appeared that two writs had issued, one dated the 15th of September, the other the 11th of October; the first executed on the 26th of September, the other on the 24th of October, which was after the parliament was to begin. On the 15th of October the first writ and return were tendered to the clerk of the crown, but he refused to receive them; on the 29th of October he received both returns together. The objection to the first writ was, that no summons, or proclamation had been made. The under-sheriff proved that the writ was delivered to the high-sheriff on the Saturday, and he received it on the Sunday, and the county day was on the Monday, on which day he was bound to execute the writ; so that he had no time for summons, or proclamation. That on the Monday all the forms were complied with, and three thousand persons were present. The committee thought the first writ and return were in matter and form perfect, and duly executed; the second writ they thought of no avail, and besides was perilous in time to come, as it appointed *two others* to be chosen; and that the member chosen under the first writ ought to take the oaths, and be allowed; and the House agreed.

Notice of
Election, &c.Dewes's
Journ. p. 396.

Notice of
Election, &c.

11 Journ.
p. 481,

In the following case, proclamation was made in the county court, that the election would come on the day after, to which time the court was adjourned.

Kingston upon Hull, 2d March, 1695.—The town of Kingston upon Hull, with some adjacent towns, make a county of itself, and the election ought to be, as in other counties, at the next county court after receipt of the writ. The county court had been adjourned from the 18th to the 21st of October, and from the 21st to the 22d, when the writ was delivered to the sheriff; and on that day proclamation was made for the election on the next day, when the election was made, and the persons then returned were resolved to be duly elected.

Prynne's Br.
Parl. red.
p. 172.
Ib. p. 163.

It might happen, that no county court might intervene between the receipt of the writ and the day for which the Parliament was summoned, and against which the return was to be made. This fell out in the 1st of Edw. III. as to the county of Suffex, and in the 29th of Hen. VI. as to the county of Leicester; and in both those cases the sheriff returned, that no county court was held by him, in his county, after the receipt of the writ, and before the day for which the Parliament was summoned. So it happened as to the counties of Cambridge and Caernarvon, in the year 1640. In the last case the writ

2 Journ.
p. 21. 25.

was returned with a *tardé*; and in both cases warrants for new writs were ordered.

Notice of
Election, &c.

Prynne observes, that if the county court is held but a day or two before the Parliament sits, yet the sheriff must proceed to the election, and cites the case of Wiltshire, in the 8th of Ed. II. So in the case of Devonshire, 28th Hen. VI. the election and return of the knights of the shire were made *only two days* before the meeting of Parliament, in which short space of time they could not possibly go from Devonshire to Westminster, and so could not attend at the opening of the session, as the writ required.

Prynne's Br.
Parl. red.
p. 172. 151.

To remedy these inconveniences, it was enacted, by the 7th and 8th of Will. III. c. 25. s. 3. "that if the next county court fell out to be held within six days after the receipt of the writ, or upon the same day," the sheriffs should adjourn the same court to some convenient day, giving ten days notice of the time and place of election. But the case of the county of Pembroke, in 1770, which will be stated at length hereafter, shews that this statute might be evaded. In that county it should seem that, by custom, the sheriff might postpone the next county court after receipt of the writ, to a more distant day, than that on which it regularly ought to be held. In the case alluded to, the writ issued on the 6th of March, and the county court was to have been held in the regular course on Tuesday the

Notice of
Election, &c.

the 13th, when the writ for the election was delivered to the sheriff; and he, probably, expecting it, gave notice on that day (though as of the day before) that he would postpone that court, and hold it on the Tuesday following, the 20th; whereby, as he must have given ten days notice, before he could have proceeded to the election, if the court had been held on the 13th, he expedited it at least four days; and the election was deemed valid.

Under the statute of William, where the county court happened to be held within six days after the receipt of the writ, or on the same day, the sheriff had the power to delay the election, by making a long adjournment; and then, as the act directs, giving ten days notice of the election. To obviate the inconveniences which had been felt from the exercise of this power, it was, by a subsequent act, passed in the reign of George the Second, provided, that no sheriff should, in such case, "take upon himself to adjourn such court for longer than sixteen days." The late statute of the 25th. of Geo. III. c. 84. has introduced a material alteration in this part of the law of Parliament, and has made the election of knights of the shire no longer to depend upon the time when the next county court would be held in regular course, but requires the sheriff to call a special county court expressly for this purpose

pose only ; for, by section 4, it is enacted, that the sheriff shall, within two days after receipt of the writ, "cause proclamation to be made, at the place
 " where the ensuing election ought by law to be
 " holden, of a *special county court* to be there
 " holden, *for the purpose of such election only*, on
 " any day, Sunday excepted, not later from the
 " day of making such proclamation than the 16th
 " day, nor sooner than the 10th day ; and that he
 " shall proceed in such election, at such special
 " court, in the same manner as if the said election
 " was to be held at a county court, or at an ad-
 " journed county court, according to the laws
 " now in being."

Notice of
 Election, &c.

If a contest is expected, and several candidates have declared themselves, the 18th of Geo. II. c. 18. s. *, requires, that, before the election comes on, the sheriff, under-sheriff, or whom he shall depute, shall erect, " at the expence of
 " the candidates, such number of convenient
 " booths, or places for taking the poll, *as the*
 " *candidates, or any of them, shall, three days at*
 " *least before the commencement of the poll, desire,*
 " so as the same do not exceed the number of

Booths
 erected.

* This act was at first meant to be confined to Yorkshire only, where there had lately been a contested election ; but, by a majority of 178 to 68, it was extended to all the counties of England and Wales. 26th January, 1743.
 24 Journ. p. 522.

" rapes,

Booths
erected.

“ rapes, wapentakes, wards, or hundreds, within
“ the said county; and not exceeding, in the
“ whole, the number of fifteen;” and on the
most public part of each of the said booths, or
polling places, shall be affixed the names of the
rapes, wapentakes, lathes, wards, or hundreds,
for which it is allotted.

Lists of
towns, &c.
in each booth.

“ And the sheriff, or under-sheriff, shall also
“ make out a list, for each of the said booths or
“ polling-places respectively, of all the several
“ towns, villages, parishes, and hamlets, lying
“ or being wholly or in part in the rape, wapen-
“ take, lathe, ward, or hundred, or in the several
“ rapes, wapentakes, lathes, wards, or hundreds,
“ for which such booth or polling-place is
“ allotted or designed; and shall, upon request
“ made, deliver a true copy thereof to any of the
“ candidates, or their agents, who shall desire
“ the same, taking for each of the said copies,
“ the sum of 2s. and no more.”

This act, which relates to *all* the counties of
England and Wales, has virtually repealed the
6th section of the 10 Anne, c. 23, relating to
the elections of knights of the shire for the
county of York; and the 7th section of the same
act, concerning the elections of knights of the
shire for the county of Chester.

Partiality in
the Sheriff.

The sheriff, or other returning officer, ought
not to prostitute his situation, by stepping
aside

aside from the path of duty, and shewing any improper or illegal favour to any of the candidates. Where returning officers, or other persons in public characters, have done so, they have drawn upon themselves the censure of the House. Thus, in 1705, preparatory to an election of members, the mayor of Norwich, (where the sheriffs are the returning officers) published a bye-law of that corporation, made on the 28th of October, 1640, enacting, that any one that should give his voice for any man, not free to be chosen citizen for the Parliament, should forfeit to the use of the poor 5*l.* or suffer imprisonment. The House, on the 6th of December, 1705, resolved, "that William Blyth, Esq. late mayor of the city of Norwich, by printing and publishing a pretended bye-law, made in the year 1640, contrary to *Magna Charta*, in order to terrify the electors of the said city from free and impartial voting, in the late election to serve in parliament for the said city, is guilty of an illegal and arbitrary proceeding."

Partiality in
the Sheriff.

15 Journ.
P. 55, 56.

Sudbury, 1774.—One question was, whether any formal admission in the books of the corporation was necessary, in order to give persons, having an inchoate right to their freedom, a right to vote. Just before the election, the mayor (who was the returning officer) had

2 Dougl.
P. 148.

Partiality in
the Sheriff.

2 Dougl.
p. 172.

Sheriff not
executing the
writ.

10 Journ.
p. 300.

1000 copies of an extract from the Durham act, (3 Geo. III. c. 15) containing the clause disqualifying freemen admitted within the year, and mentioning the penalty of 100*l.* upon such as should presume to vote; but *omitting the clause in favour of persons having an inchoate title.* He had caused these papers to be distributed among the persons claiming to be enrolled; and, upon some of them taking the alarm, and coming to him, he had told them they would be liable to the penalty if they voted. The chairman of the committee, when they had settled their opinion on the merits, but before they reported to the House, ordered the mayor to be called in, and publicly reprimanded him for this improper conduct.

When the writ has been delivered to the sheriff, if he was to keep it in his hands unexecuted, after the time for calling a county court was elapsed, upon complaint to the House, he would be ordered to attend, and, if he could not give a sufficient reason for his conduct, would incur the censure of the House.

Dorchester, 3d December, 1689.—On complaint that the writ for electing a burghers for this borough was not executed, it was ordered that Mr. Cooper, the late under-sheriff, and Mr. Atwell, the present under-sheriff of the county of Dorset, do attend to-morrow, to give an account

count of the reason thereof. And on the 4th, after they had been examined, it was ordered, that the mayor of Dorchester should forthwith proceed to execute the precept sent him by the *late* sheriff. Here the sheriff, who had issued the precept, was dead, notwithstanding which the mayor was ordered to proceed to execute it. The writ being directed to the deceased sheriff, must have been returned by his successor; but, from the ensuing case, if the sheriff should die after he has received the writ, and before he has executed it, it should seem that the writ must be superseded, and a new one ordered, directed to the new sheriff.

Sheriff not
executing the
Writ.

1b. p. 301.

In the case of Gloucester city, which is a county of itself, 19th Dec. 1702, Mr. Speaker acquainted the House, that he had received a letter from one of the sheriffs of Gloucester, stating that the other died the same day he received the new writ for electing a citizen, &c. and that, by reason thereof, and before a new sheriff was chosen, the county court was passed without executing the writ, and that he desired the direction of the House; and it was thereupon ordered, that the clerk of the crown should make out a supersedeas of the said writ, and that Mr. Speaker should issue his warrant to the clerk of the crown to make out a new one.

14 Journa.
P. 88.

C H A P. II.

ELECTORS OF KNIGHTS OF THE SHIRE NEED NOT BE RESIDENT WITHIN THEIR RESPECTIVE COUNTIES, BUT MUST HOLD ESTATES THEREIN BY FREEHOLD TENURE.

Electors in
general.

FROM the most remote period of history there has been some general assembly or parliament in this kingdom, convened occasionally by its monarchs to assist them with its advice, and to make laws for the benefit of the people. During the Saxon æra it was denominated *the Wittenagemote*, or assembly of wise men. Under various names it was continued after the Norman conquest; and, from about the middle of the reign of Henry III. has been distinguished by the appellation of *the Parliament*. Of whom the Wittenagemote was composed has been much disputed among antiquarians, but it is not our design to enter into the controversy here. As it is not clear that the Commons made any part of this national council, so it can be still less ascertained (supposing they sat there) whether

Electors in
general.

whether they sat in person, or by representation. After the Norman conquest, the situation of the lower class of freeholders underwent no material alteration, except that the feudal services were exacted by their new masters with greater rigour than before. The county courts were attended, for centuries, by the nobility and great men, and the elections of knights of the shire were made by them. At length they discontinued their attendance, to which the statute of Merton (20 Hen. III. c. 10) much contributed, by dispensing with their personal appearance, and allowing them to do suit by their attornies. But, even after this act had diminished the number of suitors at the county courts, the lower class of freeholders, who were not then numerous, did not interfere in elections. And Prynne has preserved some very curious returns, in the reigns of Henry IV. V. and VI. of knights of the shire for the county of York, made only by the attornies of the great men. In process of time the lower class of freeholders in each county became more numerous and powerful, and took part in the elections of knights of the shire. The statute of the 1 Hen. V. c. 1. passed in the year 1413, makes mention of "knights, esquires, and "others, which shall be choosers, &c." But the preamble to the 8 Hen. VI. c. 7. speaks of the great number of persons who claimed a right to

C

vote,

Electors in
general.

vote, as an innovation; for it recites, that the elections of knights of the shire, in many counties, "has *now of late* been made by too great and "excessive number of people dwelling within the "same counties, of which the greater part was "by people of little *or no substance**, every one "of whom *pretends* to have a voice equal, as to "such elections, to act with the most worthy "knights or esquires dwelling within the said "counties, whence homicides, riots, batteries, "and divisions, between the gentlemen and other "people of the same counties, will probably "arise and be, if convenient remedy be not "provided." The words, "people of little or "no substance," import, at first sight, that persons, not freeholders, had claimed the right of voting; but they may also apply to freeholders possessed of small estates, or of estates incumbered in such a manner as to bring no annual profit; and the provision afterwards in the act, that voters shall have a freehold of 40s. a year, *above reprises*, seems to authorize this construction.

Glanville,
pref. p. 11.

The first case that occurs upon the subject of elections is said to be the following one: in the year of the reign of Edward the 1st, a petition was presented, by Matthew de Cranthorn, to the Council, complaining of a false return

* *De petit a veir ou de null valu.*

return

return of a knight of the shire for the county of Devon, and praying to have due remedy for receiving his costs. He states therein, that he himself had been elected, by the bishop of Exeter*, in these words: “the said Matthew, by the
 “bishop of Exeter, Sir William Martin, by the

Electors in
 general.

* In some counties the Lord Lieutenants assumed the right to nominate one member for every borough within their districts. In the case of Lyme, an entry, dated 29th January, 159 $\frac{3}{4}$, 35 Eliz. was produced, in these words: *ad hanc diem extitit electio burgensium parliamenti, & Robertus Hassard electus est per majorem, burgenes, & liberi homines. Et alter burgensis, viz. Zacharias Bethel electus est per dominum Marchionem de Winton.* In what relation to the borough the marquis of Winchester stood, did not appear. In the hereafter-cited case of Gatton, 26 Mar. 1628, in 30 Hen. VIII. and 1 & 2 & 3 of Philip and Mary, Mrs. Copley made the return solely; and in 7 Ed. VI. Mrs. Copley, & *omnes inhabitantes*. And in the 14 Eliz. the lady of the town of Aylebury actually executed the indentures of return of members in her own name, in a form similar to that of a power of attorney; and in the 28 Eliz. John Packington, esquire, lord of that town, executed similar indentures jointly with the corporation. Even so late as the revolution it was necessary to abolish, by act of Parliament, a right claimed by custom, by the Lord Warden of the Cinque Ports, to nominate one of the members for each port. The preamble to that act recites the pretended claim, and enacts, that all such nominations or recommendations were and are contrary to the laws, &c. A bill for the same purpose had been prepared in the preceding Parliament, but it was dissolved before the bill was passed.

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general.

“ assent of the *other* good men of the county,
“ were elected, and to the sheriff in full county
“ presented, &c.” The petition was referred to
the court of Exchequer, to inquire into the mat-
ter of the false return.

It is generally agreed by antiquarians, that
antiently the knights of the shire were elected at
the county court, by the persons who owed suit
and service there. By the 7 Hen. IV. c. 15,
the sheriff is directed to proclaim the day and
place of the parliament in his full county; “ and
“ all they that be there present, as well suitors
“ duly summoned for the same cause, *as other*,
“ shall attend to the election of the knights for
“ the parliament; and then, in the full county,
“ they shall proceed to the election, freely and
“ indifferently, notwithstanding any request or
“ commandment to the contrary.” Where it
is evident, that by the words *as other*, the sta-
tute meant other *suitors* not summoned. Per-
haps it was from mistaking the sense of these
words, that Mr. Prynne was led to assert, that
before the 8 Hen. VI. “ every inhabitant and
“ commoner in each county had a voice in the
“ election of knights, whether he were a freeholder
“ or not.” In this assertion he has had few fol-
lowers; and, indeed, it would require the strongest
authorities to support a position so diametrically
opposite to the aristocratic spirit of the feudal
system.

Brev. Parl.
red p. 187.
See 2 Whitel.
p. 90.

system. In the case of Ashby and White, Lord Chief Justice Holt, with greater probability, supposes the right of election to have resided at common law in freeholders only, however small the value of their estates; all of whom are now taken to have been suitors at the county court.

Electors in
general.

1 Salk. p. 29.

4 Inst. p. 2.

The writ of summons gives the sheriff no information as to the right of voting; its words are: "We command and strictly enjoin you, that (proclamation being made of the day and place aforesaid, in your next county court to be holden after the receipt of this our writ) two knights, of the most fit and discreet of the said county, girt with swords, and of the university of Oxford two burgessees, and of every city of that county two citizens, and of every borough in the said county two burgessees, of the most sufficient and discreet, *freely and indifferently, by those who at such proclamation shall be present, according to the form of the statutes in that case made and provided, you cause to be elected; and that the election, in your full county so made, distinctly and openly, under your seal, &c.*" It is required only, that the election shall be made openly and fairly, in the next county court after the receipt of the writ, *by those who shall be present at the proclamation.* But the before-mentioned statute of the 7 Hen. IV. c. 15. from

Electors in
general.

which this clause is taken, explains these words, and confines them to the *suitors* then present. Indeed the expression of *those* who shall be present, and *suitors* who shall be present, amounted to the same thing when that act passed; for, in feudal times, none would voluntarily take the trouble of attending, and therefore such only would be present as were obliged to do suit to the county court.

Residence of
electors.

We may now leave conjecture, and proceed to facts. The first restraint upon the electors for counties, which has been handed down to us*, was by the act passed in the 1 Hen. V. c. 1. which enacted, that the knights and esquires, and others, which should be choosers of knights of the shires, should be resident within the shire where the election was, on the day of the date of the writ of the summons of the Parliament. The 8 Hen. VI. c. 7. and 10 Hen. VI. c. 2. also required, in addition to the qualification hereafter mentioned, that they should be dwelling and resident within the county. These provisions, after having been disregarded for centuries, were repealed so lately as by the 13 Geo. III. c. 58. and thereby an end is put to all questions upon the residence of these electors.

* The preamble of the act of 1 Hen. V. mentions other statutes relating to such *elections*.

The

The 8 Hen. VI. c. 7. first required the electors for counties to have a qualification of freehold to a certain value, thereby, as some think, restoring the aristocratic spirit of the constitution, which had then been lately broke in upon ; or, as others assert, making an inroad upon the liberties of the people, by depriving the lower class of freeholders of a privilege they had always enjoyed before. However this may be, the restriction introduced by this statute has been continued by subsequent statutes, nearly in the same words, to the present time, and has formed the basis of the modern system of parliamentary law, so far as concerns county elections. This act, after the preamble already mentioned, provides that “ the knights of the shires, to be
 “ chosen within the same realm of England, to
 “ come to the parliaments of our lord the King,
 “ hereafter to be holden, shall be chosen, in
 “ every county of the realm of England, by
 “ people dwelling and resident in the same
 “ counties, whereof every one of them shall have
 “ freehold (*frank tenement*,) to the value of 40*s.*
 “ by the year, at the least, above reprises ;—and
 “ such as have the greatest number of them that
 “ may expend 40*s.* by the year, and above, as
 “ aforesaid, shall be returned by the sheriffs, &c.”
 “ and every sheriff of the realm of England
 “ shall have power, by the said authority, to
 “ examine,

Electors must
have free-
holds of 40*s.*
per annum,

Electors must
have free-
holds of 40s.
per annum.

“ examine, upon the evangelists, every such
“ chooser, how much he expend by the year.—
“ Provided always, that he which cannot expend
“ 40s. by the year, as aforesaid, shall in no wise
“ be chooser of the knights of the Parliament;
“ and that, in every writ that shall hereafter go
“ forth to chuse knights for the Parliament,
“ mention be made of the said ordinances.

In order to shew the full effect of this statute, it must be observed, that Bishop Fleetwood, in his *Chronicon Pretiosum*, written at the beginning of this century, has fully proved, that 40s. in the reign of Henry the VIth, was equal to 12l. in the reign of Queen Anne; and the assertion of Sir William Blackstone, that 12l. then, was equal to 20l. now, seems well founded.

1 Bl. Com.
p. 167.

The last mentioned statute not having expressly required, that the freehold of an elector should be within the county, the 10 Hen. VI. c. 2. as declaratory thereof, enacted, that “ the
“ knights of all counties within the said realm,
“ to be chosen to come to parliaments hereafter
“ to be holden, shall be chosen in every county
“ by people dwelling and resiant in the same,
“ whereof every man shall have freehold to the
“ value of forty shillings by the year at the
“ least, above reprises, *within the same county*
“ where any such chooser will meddle of any
“ such election.”

The

The 7 and 8 W. III. c. 25. makes no alteration as to the value of the qualification of a freeholder, and by the freeholders oath thereby imposed, he only swears that he is a freeholder, and has freehold lands or hereditaments of the yearly value of 40s. The statute of 10 Ann. c. 23. makes the voter swear that he is a freeholder, and has freehold lands or hereditaments of the yearly value of 40s. *above all charges payable out of the same.* The 18 Geo. II. c. 18. f. 5. enacts, that no person shall vote in any election for knights of the shire, "without having freehold estate in the county for which he votes, of the clear yearly value of 40s. over *and above all rents and charges payable out of or in respect of the same,*" under penalty of £. 40 to any candidate for whom he did not vote, and who shall first sue for the same, to be recovered as therein directed; "and in every such action, the proof shall lie on such person against whom the same was brought." And the freeholders oath or affirmation, as altered by this act, and as now imposed, is, that he is a freeholder, and has "a freehold estate, consisting of lying or being at in the county of of the clear yearly value of 40s. over and above all rents and charges payable out of or in respect of the same."

Electors must have freeholds of 40s. per annum.

By 7. & 8. W. 3. c. 25.

every freeholder, before being admitted to poll, must if required by any candidate, take the oath.

The 18 Geo. II. c. 18. f. 5.

and above all rents and charges payable out of or in respect of the same,

under penalty of £. 40 to any candidate for whom he did not vote, and who shall first sue for the same, to be recovered as therein directed;

and in every such action, the proof shall lie on such person against whom the same was brought.

And the freeholders oath or affirmation, as altered by this act, and as now imposed, is, that he is a freeholder, and has "a freehold estate, consisting of lying or being at in the county of of the clear yearly value of 40s. over and above all rents and charges payable out of or in respect of the same."

The 10. Ann. c. 23. f. 1.

A. in order to be admitted to vote, must make an affidavit, either of a candidate, or of any person entitled to vote at some election.

By 18. Geo. 2. c. 18. f. 5.

The oath was as follows, as altered, is now made administrable on request, or of any candidate or elector as by the 10. Ann.

The altered, is now made administrable on request, or of any candidate or elector as by the 10. Ann.

Freehold tenure.

The requisition of the 18 Geo. II. c. 18. upon which the landed qualification of the electors of knights of the shire depends, is, that every person voting in any election for knights of the shire, shall have "*a freehold estate* in the county " for which he votes, of the clear yearly value of " 40s. over and above, &c." In order to ascertain the true meaning of the words *a freehold estate*, as applied to land, it will be necessary to say a word or two upon the tenures under which the lands in England were held in the reign of Henry the VIth, when the act was passed, from which this expression was borrowed.

The feudal system supposed all the lands of the kingdom to be derived from the crown. And the tenures * by which they were held of the king, or of subjects under grants from the king, were *free* or *servile*. The great division of *free* tenures was of land held by knights service, or in free socage; the *villein* tenures were villenage, and privileged villenage, called also villein socage.

The statute of Henry VI. therefore, by the word *freehold*, requires every voter to have an estate held by free tenure, as opposed to base or

* All tenures are now turned into free and common socage (except tenures in Frankalmoign, " any tenure by " copy of court roll," and the honorary services of grand serjeanty) by 12 Car. II. c. 24.

servile

servile tenure; but that is not all, for this word *Freehold tenure.* is also descriptive of the interest which the tenant has in the land, and it has been always construed in this statute to mean, not only that the tenure, but the interest of the voter shall be freehold.— We shall now proceed to examine the nature of the *tenure*, reserving the consideration of the *interest* necessary to give a vote at a county election, for a distinct chapter.

It is not disputed that all those who held *Copyholders.* lands by the free tenures, had a right to vote at the election of knights of the shire; it remains therefore to shew, what landholders were deprived of that privilege by the baseness of their tenure. Before, as well as after the Norman Conquest, there were a great number of persons who were allowed to hold small portions of the demesne lands of the lords, at the will of the lords, to maintain themselves and families, upon the performance of the most mean and abject services; services, not only base, but uncertain both as to time and quantity; and these were said to hold their lands in villenage. *Ille qui tenet in villenagio faciet quicquid ei preceptum fuerit nec scire debet sero, quid facere debet in crastino, et semper tenebitur ad incerta.* *Braeton, l. 4. tr. 1. c. 28.*

Villeins were either *regardant*, annexed to the land, or *in gross*, annexed to the person of the lord,

Copyholders. lord, and transferrable by deed *. A villein could not leave the land of his lord without permission, nor acquire property of any sort, for every thing in his tenure or possession belonged to his lord, who

* The following instances are extracted from the Coucher Book of Whalley Abbey, in Lancashire, the property of Asheton Curzon, Esquire.

Carta Richi Blundell facta nobis de Henrico filio Richardi Staynule et sequila sua.

Sciant omnes tam presentes quam futuri, quod ego Richardus, filius Willmi Blundel de Ynes, dedi & concessi, & hac presenti carta mea, de me & heredibus meis in perpetuum quiete clamavi, deo & domini factæ Mariæ de Stanlawe abbati et monachis ibidem Deo servientibus, totum jus meum & clamium quod habui, vel de cetero habere potero, in Henricum filium Richardi de Steynul de Ynes, cum tota sequela sua in puram & perpetuam elemosinam, prout aliqua elemosina melius et liberius dare poterit pro anima mea, & animabus patris & matris meæ antecessorum & successorum meorum. Ita videlicet integre & plenarie quod ego prædictus Richardus filius Willmi Blundel, vel aliquis heredum meorum, aliquod jus vel clamium in prædicto Henrico, filio Richardi Stanul de Ynes, nec in sequela sua tota, nec in mobilibus suis sive in rebus suis dum manserit in terra mea sive extra de cetero exigere vel clamare poterimus, nisi præces & orationes apud dominum. Et si quis contra hanc meam quiete clamationem temere ire præsumpserit, maledictionem Dei patris omnipotentis & sanctæ Mariæ noverit incursum. Quare volo & firmiter concedo, quod hæc mea quiete clamatio rata & inconcussa imperpetuum permaneat. Sigillum meum presenti scripto pro me & heredibus meis apposui.

who might seize it for his own use whenever he thought fit ; the children of villeins were in the same bondage as the parents. The lords, however, had the power of manumitting them, and raising them to the rank of freemen ; and so many had been enfranchised, that when villenage was virtually abolished by the 12 Car. II. there was

Copyholders.

apposui. Hiis testibus Willmo de Molyneus, Alano Norreys, Thurstano de Holand, Rogero de Molyneus, Henrico de Ayntre, Willmo iudice Lytherlonde, Galfrido de Derby clerico, & multis aliis.

Carta Richi Blundel facta nobis de Henrico, filio Rogeri de Ynes, et fratribus suis, cum tota sequela eorum.

Omibus ad quos presens scriptum pervenerit, Richardus Blundel salutem in domino. Noveritis me pro salute animæ patris mei & matris meæ, antecessorum, & successorum meorum dedisse & concessisse & hac præsentī carta mea confirmasse Deo, & beatæ Mariæ de Stanlawe & monachis ibidem Deo servientibus Henricum filium Rogeri filii Willmi de Ynes, Richardum, & Robertum fratres suos cum tota secta de propriis corporibus eorum proveniente. Ita quod Richardus vel heredes mei aliquid juris vel calumpniæ in prædictis Henrico, Richardo, & Robto, vel eorum secta ut prædictum est nunquam de cetero poterimus habere vel exigere. Et quam firmiter volo, quod hæc mea donatio & concessio robur obtineat firmitatis presenti scripto sigillum meum apposui. Hiis testibus Willmo Blundell clerico, Alano Norreys, Roberto de Molineus, Willmo Russell, Ad de Aynoluesdale, Robto de Thorneton, Richardo filio Richi de Thorneton, & aliis.

hardly

Copyholders. hardly a pure villein left in the nation. Sir Thomas Smith, Secretary to Edward the VIth, tells us, that he never knew a villein in gross; and that the few villeins regardant remaining in his time, were such as had belonged to the clergy in times of popery. In the 15th year of Jac. I. a defendant pleaded that he was seized of a manor, and that the plaintiff was a villein regardant.

Noy, p. 27.

The lords having permitted their villeins and their children to enjoy land for a long series of years in a regular course of descent, the law allowed them, though originally mere tenants at will, to prescribe against their lords, and, under this evidence of a custom, to hold the lands notwithstanding the determination of their will. From this mean origin are, by many of our best writers, perhaps not very satisfactorily, deduced the modern race of copyholders, who, Sir William Blackstone asserts, "are in truth no other but
 " villeins, who, by a long course of immemorial
 " incroachments on the lord, have at last established a customary right to those estates,
 " which before were held absolutely at the lord's
 " will." They are still said to be held *at the will of the lord*, but then that will is regulated *according to the custom of the manor*; and, as the entries of their admission on the rolls of the courts baron, or the copies of such entries witnessed

nessed by the stewards, are all the title they Copyholders.
 have, they have been denominated *tenants by*
copy of court roll, and the tenure itself a *copy-*
hold. Not being originally of the rank of free-
 men, they were not suitors to the county court,
 and, even since they have been raised to a more
 respectable situation, they do not possess the
 freehold of their estates, *that* is vested in their
 lords, who grant out the use and occupation
 only, but not the corporal seisin of the land.
 Whatever *interest* therefore they may have in it
 by the custom of the manor, as they do not hold
 it by a freehold tenure, they can have no right to
 vote at the election of knights of the shire.

2 Black.
Comm.
p. 148.

In conformity, therefore, to the common law,
 the 31 Geo. II. c. 14. s. 1. provides, “ that no
 “ person, who holds his estate by copy of court
 “ roll, shall be entitled thereby to vote at the
 “ election of any knight or knights of the shire
 “ within that part of Great Britain called Eng-
 “ land, or principality of Wales. And if any
 “ person shall vote in any such election, contrary
 “ to the true intent and meaning hereof; every
 “ such vote shall be void to all intents and pur-
 “ poses whatsoever; and every person so voting
 “ shall forfeit, to any candidate for whom such
 “ vote shall not have been given, and who shall
 “ first sue for the same, the sum of £. 50;—and
 “ in every such action the proof shall lie on the
 “ person against whom such action shall be
 “ brought.”

Copyholders.

“brought.” The latter part of this clause ought not to pass without animadversion, for it is founded on a total perversion of the first principle of justice, That a man shall be presumed to be innocent, until the contrary is proved; but here his guilt is presumed, and he is to prove his innocence as he can. The consequence too of his producing this proof, may affect him infinitely beyond the action for the £. 50; for by the freeholders oath he is required to swear that he is a freeholder, and has a freehold estate, and if he swears falsely, he incurs the punishment inflicted for perjury; so that by laying the *onus probandi* upon him in a civil action, he may be compelled to furnish evidence to convict himself of an infamous crime. This is not the only instance of the kind in the law of England.

Tenants in ancient demesne.

Certain manors and lands which are now in the hands of subjects, but appear by Doomsday Book to have belonged to the crown in the time of Edward the Confessor and William the Conqueror, are said to be held in *ancient demesne*. In these manors and districts were villeins, as well as *liberi tenentes*; and the villeins there were divided, as in other manors, into pure and privileged villeins *. Privileged villenage, or villein

* Besides these privileged villeins, “in ~~cist~~ maneriis
“ sunt

lein socage, was only a more exalted species of villenage. These tenants were obliged to perform base or villein services, but they were certain and fixed; and they held their lands not *at the will of the lord*, but *according to the custom of the manor*. They could not alien by grant or feoffment, but like pure villeins by surrender to the lord, or his steward. As these tenants were employed in the cultivation of the king's lands, they enjoyed many privileges above other persons of their rank; they were not liable to be summoned to any turns or inquests out of the manor; they were exempted from the payment of tolls; and, when taxes or tallages were laid upon the rest of the nation by the parliament, they could not be made to contribute, but were tallaged separately by the king, when he thought fit.

Tenants in
ancient de-
mesne.

Kitchen,
P. 196.

Britton, c. 66.
fol. 165.

F. N. B. p.
14.

In each of these manors held in ancient demesne, is a court where all causes arising within the manor are determined, and the title to land held by this tenure is tried by a writ of right close, while mere copyholders can only sue by bill in the court of their lord.

Kitchen,
P. 196.

As *privileged* villeins, they could not be compelled either to hold or relinquish their lands at the will of their lords. Hence Bracton says, "*dicuntur liberi*." Britton, c. 66. fol. 165,

"*sunt liberi tenentes, & feoda militaria, & serjantia, & puri nativi, sicut alibi in regno.*" Fleta, lib. 1. cap. 8.

D

calls

Tenants in
ancient de-
mesne.

Bro. tenant
per copy de
court roll
pl. 22.

2 Bl. Comm.
p. 149.

Copyholder,
p. 32.

On copy-
holders,
p. 103.

calls them the king's "*Socmans*;" and *Fleta* gives them the same appellation, lib. i. c. 8. In another view, they are a sort of freeholders; for if tenant by the verge in ancient demesne is attainted of felony, the king shall have *annum diem & vastum*, as in the case of a freeholder; because, says the book, freeholders in ancient demesne have no other evidence but copies of court rolls, yet they differ from other mere copyholders, for they have the freehold. Again, tenants in ancient demesne hold, as has been said before, not at the will of the lord as ordinary copyholders, but according to the custom of the manor; therefore the law does not suppose the freehold to rest in the lord, but in the tenants themselves, who are, says Blackstone, sometimes called customary freeholders, being allowed to have a freehold *interest*, but not a freehold tenure. Though these tenants, holding not at the will of the lord, but according to the custom of the manor, are most usually found in the manors of ancient demesne, yet they are sometimes met with in other manors. Lord Coke mentions such in the county of Northampton. Mr. Justice Blackstone says they "are chiefly to be met with in manors of ancient demesne, or else in manors that bear a near relation to the crown, being parcel of the dutchy of Cornwall, or the old principality of Wales."

A copy-

A copyholder is in by demise of the lord; but, in the case of these freeholders, the lord is only a mere instrument of conveyance. And therefore, in pleading a title to a copyhold, it is sufficient to shew a grant from the lord; but, in the case of these freeholds, the surrenderor must be stated to have been seised in fee, and to have surrendered to the lord, and that thereupon he granted. In a case in Carthew's reports, it is expressly laid down, that lands holden of a manor, not *at the will of the lord*, but *according to the custom of the manor*, are a customary freehold, and not a copyhold, and therefore are not forfeited by commission of waste. And, as the property of the land is in the tenant, their lands are extendible (which copyholds are not) on an *elegit*.

Tenants in
ancient de-
mesne.

Salk. p. 365.
432.
2 Ld. Raym.
p. 1225.

Carth.
p. 432.

Gilbert on
executions,
p. 39.

The election of knights of the shire was always made *in pleno comitatu*, i. e. in the county court, by the suitors attending there. And, as the tenants in ancient demesne never did suit to the county court, they were effectually excluded from voting at the elections of knights of the shire, even if we suppose that they were of equal rank with other freeholders, which they certainly were not.

Bro. aun.
demesne,
pl. 43.

There has been a difference of opinion, whether tenants in ancient demesne are entitled to vote at county elections. Great authorities

Tenants in
ancient demesne.

4 Inst. p. 5.

4 Com. Dig.

P. 487.

are both ways. Lord Coke speaks of tenants, having freehold in ancient demesne, as no parties to the elections of knights, citizens, and burgesses; and, on the contrary, Chief Baron Comyns says, they may vote. There seems no doubt, that the common tenants in ancient demesne, holding by copy of court roll, not at the will of the lord, but *according to the custom of the manor*, are included in the general description of *copyholders*. The 12 Car. II. c. 24. which turns all the feudal tenures into free and common socage, excepts only tenures in Frankalmoigne, "*any tenure by copy of court roll*," and the honorary services of grand serjeanty; and it is under this exception, as a tenure by copy of court roll, that the tenure in ancient demesne escaped the general destruction, and is permitted to exist at this day.

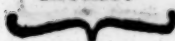
At the Oxfordshire election a copyholder, as he is called in the journals, of the manor of Woodstock polled for Lord Parker and Sir E. Turner; he was objected to, and, to substantiate his vote, it was proved, that the customary tenants of the manor of Woodstock had been reputed to have a right to vote, and actually had voted. It was shewn in evidence, that in 1734, persons possessed of customary freeholds, or customary holdings, within the manor of Cölwinston, in the county of Glamorgan, were admitted

to vote, and copies of the court rolls of that manor were read; and that persons had voted for customary holdings of inheritance in the county of Monmouth, and a *surrender* of one of them was read. It was further proved, that persons possessed of customary freeholds in the counties of Gloucester, Wiltshire, and Herefordshire, were deemed to have a right of voting, and to have voted at elections: but contrary evidence was produced as to the county of Wilts. At length the question was regularly proposed, (April 23, 1755), that "all copyholders, holding their estates by copy of court roll, not having the words *ad voluntatem domini*, or *at the will of the lord*, inserted in the copies by which such estates are holden, have a right to vote at elections for knights of the shire to serve in parliament for that part of Great Britain called England, within the intent and meaning of the laws, confining the said right of election to estates of freehold only." But the previous question was put and carried, 242 to 107. Soon after the Oxfordshire contest, was passed the before-mentioned statute of the 31 Geo. II. c. 14. by which an end is put to all question upon this subject; for it enacts, that "no person, who holds his estate *by copy of court roll*," shall be entitled to vote; making no distinction between such as hold at the will of the lord, and those who

Tenants in
ancient de-
mesne.

27 Journa.
p. 291.

Tenants in
ancient de-
mesne.



hold according to the custom of the manor. Tenants in ancient demesne therefore holding by copy of court roll, as well as copyholders, are excluded by this statute from voting, as clearly as, by the expression of "any tenure by copy of court roll," they are excepted out of the operation of the statute of Charles II.

It should seem that, notwithstanding this act of parliament, the practice has varied in different counties, as to the admission of tenants in ancient demesne to vote. In the contest for Leicestershire, in 1770, voters of this description were admitted; but there it was not material for either side to dispute their right: and at the election for Hampshire, in 1779, they were rejected. But the cases of tenants in ancient demesne holding by copy of court roll, are not always correctly distinguished from those of another description, which will be mentioned presently.

It has been pointed out, as a criterion to determine whether persons have a right to vote at the election of members of parliament, to examine whether they were under any obligation to contribute to their wages* when elected. By this rule, tenants in ancient demesne would be excluded,

Cotton's ab.
P. 541.

* It might not be difficult, taking this as the criterion, to prove, that the electors of knights of the shire were such freeholders only as held by knight's service; for, in the 2d year

excluded, for they were always exempted from that burden; and in the register is preserved the ancient form of the writs, by which the sheriff was commanded not to compel the tenants of certain manors of the ancient demesne of the crown of England, to contribute to the expences of the knights of their respective shires, and, if he had distrained upon them for that purpose, to return the distress,

Tenants in
ancient de-
mesne.

Bro. privi-
lege, pl. 56.
registr. Brev.
p. 261. 261,
b.

There is another class of landowners, generally known by the name of *customary freeholders*, who seem to be only a superior class of tenants in ancient demesne, for their tenure differs from ancient demesne, as already treated of, only in the mode of conveyance, and has probably been often taken for it. They hold of the lord of the manor, *according to the custom of the manor*; but they do not hold by copy of court roll, for their lands pass, not by surrender and admission, but by feoffment, lease and release, &c. as any other freeholds usually do. The only badge of superiority in the lord is, that no alienation can be

Customary
freeholders.

year of Henry the Vth, the commons petitioned, that the fees of the knights of the shire for the county of Kent might be levied on all persons holding in knight's service within the county, and not particularly of certain in the Guildable of Kent, except of barons and lords who came to the parliament.

Customary
freeholders.

Gloucester,
p. 64, &c.

made without his licence. The following case came before the Gloucestershire committee:— One James Boswood was tenant of lands lying within the manor of Dymock, which is ancient demesne. By the court rolls of this manor it appeared that the tenant, if he lived in the manor, always took the oath of fealty, and that the jury always presented the death of a tenant, with the services or heriots due; if those were unknown, they presented him generally. That the Dymock jury was a court baron, and at Michaelmas a court leet also. That when a tenant wanted to alienate, a private court was called, at which three customary tenants, and two freebenchers, were present. The freebenchers were freeholders in the parish of Dymock, not holding customary lands, two of whom sat as assessors in every court, but were not vested with any power, except as witnesses. That licence was always granted to two customary tenants, to enfeoff the grantee, to be held of the lord of the manor, according to the customs thereof, and the seller paid a chief rent, being one year's rent, to the lord on alienation, and that the licence was enrolled. The lord of the manor, or his steward, had no other concern in the title; the steward sometimes called for the feoffment to inspect it, but never enrolled it: but it was stated by the counsel for the sitting member, and not denied
on

Customary
freeholders.

on the other side, that the deed of feoffment ought also to be enrolled; and that the steward could enforce it, if not done within a year, by calling for the deeds, and holding the estate till they were enrolled. By the custom of the manor, estates descended to lineal heirs only, and, failing such, to the lord of the manor's use. These were the facts of the case, as stated and assumed in argument. After counsel had been heard at great length, the committee resolved, "That John Boswood, a customary and ancient demesne tenant of the manor of Dymock, according to the custom of the manor, had such a freehold therein as entitled him to vote at the last election for the county of Gloucester." The numbers were eight to five; and the chairman, who voted for the question, observed, that it appeared to him of the most doubtful nature; and that the arguments were so forcible on each side, that he was determined solely by the principle, that where the right was not clearly ascertained, he should give rather than take away the franchise.

In the counties of Cumberland and Westmorland are certain estates of inheritance, held by a peculiar species of tenure, called *tenant right*. These estates are usually described in pleadings, as "customary tenements descendible, and which have descended from ancestor to heir, as of the hereditary

Customary
freeholders.

“ hereditary right of tenants, called tenant right,
“ held of the lord as of his manor, *according to*
“ *the custom of the manor.*” They are generally
aliened by deed in the nature of a bargain and
sale, and an admittance by the lord thereon per-
fects the alienation. It is allowed that the free-
hold rests in the lord, and that these tenants have
no right to vote at county elections.

Estates not
entitling to
vote.

Dalton,
P. 333.

In some cases the nature of the estate itself
does not admit of its owner having a free-
hold in it; therefore a man cannot vote for
the advowson of a church, or for common of
pasture; but for the freewarren of conies, the
profits of wood sales, coal mines, tythes impro-
priate, or the like, in which he has an estate for
life, and producing *communibus annis* 40 s. by
the year, he is entitled to vote. The following
case came before the Bedfordshire committee:

2 Luders,
P. 440.

Joseph Marshall was possessed of a windmill
standing in a common field, upon a plot of grass
ground large enough to clear the sway of the
wings, inclosed within a fence put up by him-
self. It was fixed on a post, upon pattens, in a
foundation of brick-work. It did not appear
whether the plot of ground did or did not belong
to Marshall. Whether he had a right to vote was
fully argued on both sides. Among other argu-
ments in support of his vote, it was said, that
upon the evidence of the case he must be pre-
sumed

sumed to have a right to the soil on which his mill stood; besides, a windmill has in no case been considered as a chattel; and, as a building fixed in the soil, it must be accounted part of the freehold. His vote was held good.

Estates not
entitling
to vote.

The statute of Henry the VIIth, requires voters to have a qualification in "free land, or *tenements*, to the value of forty shillings by the year." By the 18 Geo. II. c. 18. s. 3. no person shall vote for the electing of a knight, or knights of the shire, "in respect, or in right of any messuages, lands, or *tenements*," which have not been assessed to some aid, granted by a land tax, twelve calendar months next before such election. The word tenement, though in its vulgar acceptation it is applied to houses and other buildings, "yet in its original, proper, and legal sense, it signifies every thing that may be *holden*, provided it be of a permanent nature; whether it be of a substantial and sensible, or of an unsubstantial ideal kind."

Public
officers.

2 Bl. Comm.
P. 17.

Thus the word *liberum tenementum*, frank tenement, or *freehold*, is applicable not only to land and other solid objects, but also to *offices*, rents, commons, and the like; and a franchise, an *office*, a peerage, &c. are legally speaking *tenements*. Therefore persons holding offices in fee, or for life, whether they concern lands or not, are said to have a freehold therein; and being
duly

Public
officers.

duly rated to the land-tax, are entitled to vote at the elections of knights of the shire. Hence all the inferior officers of the courts of justice in Westminster Hall vote at the county elections for Middlesex; the registers of deeds in the different ridings of the county of York, at those of that county; and all the officers of the cathedral churches, from the canons down to the choristers, have claimed to vote in their respective counties. It may be doubted, whether persons possessed of public offices in fee, or for life, were suitors at the county courts, and therefore, if the elections of the knights of the shire were confined to such suitors, as has been asserted, formerly, at least, their right might have been disputed; but long usage has confirmed them in the franchise, and especially since the 18 Geo. II. the question has been, whether the officers claiming to vote have been assessed to the land-tax for the limited time, not whether they have the necessary estate.

C H A P.

C H A P. III.

ELECTORS FOR COUNTIES MUST HAVE A FREE-
HOLD INTEREST IN THEIR ESTATES.

IT has been observed before, that it is not sufficient for voters to hold their estates by freehold *tenure*, but that they must have a freehold *interest* in them also.

Freehold
interest.

Littleton tells us, that “ every one which hath
“ an estate in any lands or tenements, for term
“ of his own or another man’s life, is called
“ tenant of freehold, and none other of a lesser
“ estate can have a freehold; but they of a greater
“ estate have a freehold, for he in fee simple
“ hath a freehold, and tenant in tail hath a free-
“ hold,” &c. And this estate of a tenant in fee, in
tail, or for life, is called a freehold, to distinguish
it from terms of years, chattels upon uncertain
interests, lands in villenage, or customary or
copyhold lands. Freehold estates may be also
known by the mode of conveyance. Freehold
estates in lands are conveyed by livery of seisin,
in tenements of an incorporeal nature, by what
is equivalent thereto.

Littleton,
sect. 57.
Co. Litt.
p. 43.

Ibid.

2 Bl. Com.
P. 104.

When a man has been in possession of land for
so long a time, that he cannot be disturbed by an
action of ejectment, he may be allowed to vote.
So Matthew Hanscomb, having been in possession
34 years, though he had paid rent for the first
ten

2 Luders,
P. 425.

Freehold
interest.

ten years, yet, as since that time his landlord had not been heard of, and no rent had been demanded, his vote was received. Here it may be questioned, whether there was any adverse right claimed by Hanscomb, until he swore to his qualification at the poll. But the committee must have held the taking of the oath to explain the nature of his possession, and to prove, coupled with non-payment of rent for so long a time, that he had held adverse for more than twenty years, the time limited for bringing an ejectment; for on this ground only the question was argued, and on no other ground can this decision be supported.

Division of
freeholds.

A convenient division of these estates, for our present purpose, may be into freeholds of inheritance, and freeholds not of inheritance. Of the first class, we shall treat very briefly; upon the second, we shall be somewhat more copious in our observations.

I. Freeholds of inheritance.

Tenant in
fee simple.

1. Tenant in fee simple has the highest interest which a subject can have in an estate. He is seised of lands and tenements to hold to him, and *his heirs*, for ever. But though the general rule is, that the word *heirs* is necessary to create an estate of inheritance, yet there are some exceptions, as in the case of a devise by will, or a fine and recovery considered as a species of conveyance,

veyance, and perhaps in some other cases. The holder of lands in fee simple may charge his estate, or dispose of it (under such restrictions as the law imposes) as he thinks proper. So that estates of inheritance may be confined by conditions of any sort, and these conditions may either render the estate a qualified or base fee, or a fee conditional; which last may be subdivided into fees conditional at common law, and fees tail. A *base* or *qualified fee*, is a fee with a qualification subjoined thereto, and must be determined whenever the qualification is at an end; as a grant to A. and his heirs, tenants of the manor of Dale; the grant is determined when the heirs of A. cease to be tenants of that manor. It is a fee, because by possibility it may endure for ever; but base or qualified, because it may end sooner. A *conditional fee*, at the common law, was a fee restrained to some particular heirs, in exclusion of others; as, "to the heirs of a man's body," or "the heirs male of his body." It was a *fee*, because it might possibly endure for ever, and *conditional*, because the condition expressed or implied at its creation was, that, on failure of such particular heirs, it should revert to the donor. Under the ancient rules of conditional fees remain annuities, and such like inheritances as fall not within the statute of Westm. 2. *de donis*. As soon as the grantee had any issue born, his estate was supposed to be-

Tenants in
fee simple.

2 Bl. Com.
P. 109. 110.

Base fees.

Conditional
fees.

Tenants in
fee simple.

come absolute, by performance of the condition, at least so far as to enable him to alien it, to forfeit it for high treason, and to charge it with certain incumbrances.

Fees tail.
2 Bl. Com.
p. 113. 115.

Fees tail are by force of the statute of Westminster, 2. c. 1. (13 Ed. I.) And a man may be tenant in tail general, or in tail special; the former is, where the estate is given to a man, and the heirs of his body to be begotten; the latter is, where the estate is given to a man and his wife, and to the heirs of their two bodies begotten. The word *body*, or some other words of procreation, are necessary to make it a fee tail, and ascertain to what heirs the fee is limited; and if either the words of inheritance, or of procreation, be omitted, it will not be an estate tail; but, in last wills, estates tail may be devised by irregular modes of expression.

Tenant in
tail after
possibility,
&c.
2 Bl. Com.
p. 124.

II. Freeholds not of inheritance, are where a man is said to be, 1. Tenant in tail after possibility of issue extinct. This happens where one is tenant in special tail, as just described, and the person from whose body also the issue was to spring, dies without issue, or leaving issue, that issue becomes extinct. Such tenant holds only for life, but he has many of the privileges of a tenant in tail.

2. Tenant

2. Tenant by the curtesy of England*; and this is where a man marries a woman, seised of lands and tenements in fee simple or fee tail, and has by her issue, born alive, which was capable of inheriting her estate, and survives her, he shall on her death hold the lands for his life. But, if a woman maketh a gift in tail, reserving a rent to her and her heirs, and the donor taketh husband, and hath issue, and the donee dieth without issue, when the wife dieth, the husband shall not be tenant by the curtesy of the rent, for that the rent newly-reserved is, by the act of God, determined. There are four requisites to make a tenant by the curtesy: marriage, seisin of the wife, issue, and death of the wife. 1. The marriage must be canonical and legal. 2. The seisin of the wife must be an actual seisin or possession of the lands, and therefore a man cannot be tenant by the curtesy of a remainder, or reversion; so, if the wife be an idiot, the King, by his prerogative, is intitled to the lands the instant she herself has any title. 3. The issue must be born alive, and during the life of the mother; so that if the mother dies in labour, and the Cæsarian operation is performed, the

Tenants by
the curtesy.

2 Bl. Com.
p. 126.

* Tavistock, 8th Dec. 1691:—The right of election appeared to be in the freeholders of inheritance, inhabiting within the borough: one David Grindey was objected to, as being only tenant by the curtesy, and was given up by the candidate for whom he voted.

10 Journ.
P. 576.

E

husband

Tenants by
the curtesy.

husband loses the estate; because, at the instant of the mother's death, he had no issue born, and the land descended to the child in the mother's womb; and, being so vested, shall not be taken from him. If the issue was born during coverture, and capable of inheriting the mother's estate, it is immaterial at what time it was born; for, in all possible circumstances, the husband shall be tenant by the curtesy.

If an estate in feignories, rents, commons, or such like, be suspended, a man shall not be tenant by the curtesy, unless the suspension be *for years* only; as, if a tenant make a lease for life of the tenancy to a feignorefs, who taketh husband, and hath issue; on the wife's death, he shall not be tenant by the curtesy; but if the lease had been for years only, it would have been otherwise.

Co. Litt.
p. 30, b.

A man shall be tenant by the curtesy of a common without stint, but a woman shall not be endowed thereof, because it cannot be divided. So he may be tenant by the curtesy of a house, which is *Caput Baronie*, or *Comitatus*, or of a castle built for defence of the realm, or of a trust estate; but a woman shall not have dower of any of these.

Co. Litt.
p. 30.

This estate is of a superior degree to a mere tenancy for life; and the husband may, even in the life-time of the wife, after the birth of issue,
do

do many acts to charge the lands, although he is only tenant by the curtesy *initiate* till the death of the wife, when his estate is *consummate*; thus if, after issue born, the husband makes a feoffment in fee, and afterwards the wife dieth, the feoffee shall hold for the life of the husband, for it could not be a forfeiture; for, at the time of the feoffment, the estate was a tenancy by the curtesy *initiate*. If a man, entitled to be tenant by the curtesy, makes a feoffment in fee, upon condition, and entereth for the condition broken, and then his wife dieth, he shall not be tenant by the curtesy; because, although the estate given by the feoffment was conditional, yet his title to be tenant by the curtesy was extinguished by the feoffment, for the condition was not annexed to it.

Tenants by
the curtesy.

Ib. 30. b.

3. Tenant in dower, is where the husband dies seised of an estate in fee, or fee tail, and the wife survives, and takes as her dower the third part* of all the lands and tenements, whereof he was seised during coverture, for the term of her natural life. And this third part is to be valued according to the value of the estate at the time of the

Tenants in
dower.

* Assignetur autem ei pro dote sua tertia pars totius terre mariti sui que sua fuit in vita sua. Magna Charta, cap. 7. But, by particular custom, the wife may, in some places, have the half, in others the whole, and in others, a quarter only, of the husband's land.

Tenants in
dower.


assignment of the dower, whether the premises be improved or impaired since they came into the hands of the heir.

Dower *by the common law*, is the only species of dower now in use*: and two points are material to consider: 1. Who may be endowed. 2. Of what. As to the first then, she must be the actual wife of the deceased, at the time of his death. A divorce *a vinculo matrimonii* destroys the dower, but not one *a mensa & thoro*; but by the statute of Westminster, the 2d, if a woman elopes from her husband, and lives with an adulterer, she loses her dower, unless her husband is voluntarily reconciled to her. The widows of traitors, (except in case of certain modern treasons relating to the coin) but not of felons, are barred of their dower. And an alien, unless she is the queen consort, cannot be endowed, for an alien is incapable of holding lands; and, for that reason, the widow of an alien cannot claim dower of his lands, for he could legally possess none. As to the 2d, *Of what*: In general the widow may be endowed of all lands and tenements of which her husband was seised in fee simple, or fee tail, at any time during coverture, and of which

* Dower *ad ostium ecclesiæ* and *ex assensu patris* may exist now, but the uncertainty arising from the right of the widow to elect whether she will take her dower in those forms, or by the common law, has occasioned both to be totally disused.

any of her issue might by possibility have been heir; and a seisin *in law* of the husband, will be as effectual as a seisin *in deed*, to entitle the wife to her dower. But of every seisin in law, or actual seisin of lands and tenements of the husband, a woman shall not be endowed; for if the grandfather of A. is seised of three acres of land in fee, and taketh wife, and dieth, this land descendeth to the father of A. and the widow is entitled to her dower, or one acre. The father dieth, and so doth the wife of the grandfather; the wife of the father shall be endowed only of the two remaining acres, for the dower of the grandmother is paramount the title of the wife of the father, and the seisin of the father, which descended, is defeated, and he had but a reversion expectant on a freehold; and, in this case, *Dos de doto peti non debet*. But there is a great diversity here between a descent and a purchase; for, if the father had taken the estate by purchase, the wife of the father would have been endowed also of the part assigned to the grandmother. So, if the wife of the father is first endowed by the son who enters after the death of his father and grandfather, the wife of the grandfather shall not be endowed of the dower of the wife of the father. In some cases also the husband may be seised in fee; yet, after his death, the wife shall not be endowed, as both of land given, and land taken in exchange, but she may

Tenants in
dower.



Co. Litt.
P. 31.

Tenants in
dower.

Co. Litt.
P. 32.

have her election to be endowed of which she will. And where there are two jointenants in fee, if one maketh a feoffment in fee, yet his wife shall not be endowed. The seisin of the husband for a transitory moment only, when the same act which gives him the estate conveys it also out of him again, (as where, by a fine, land is granted to a man, and granted back again by the same fine) will not entitle to dower, for the land was merely *in transitu*, and never rested in him; but, if it had *rested* in him for a single moment, she would be endowed of it. If the husband make a lease for life of lands, reserving rent to him and his heirs, and he taketh wife, and dieth, the wife shall not be endowed of the reversion, because he was not seised of it during coverture; nor of the rent, because he had but a particular estate therein, and no fee simple; but if the husband maketh a gift in tail, reserving a rent to him, and to his heirs, and after taketh wife, and dieth, she shall be endowed of this rent, because it is a rent in fee, and by possibility may continue for ever.

In general, a wife may be endowed of all her husband's lands, tenements, and hereditaments, corporeal, or incorporeal, although the husband aliens the lands during the coverture, for he aliens them subject to his wife's dower; but there are a few exceptions to this rule, for she shall
not

not be endowed of a castle built for the public defence of the realm; nor of a common without stint, though she may of a common certain; nor of copyhold estates, unless by custom; but she may of the principal mansion, unless it be a castle built for defence of the realm, or *caput comitatus, five baronis*. She shall be endowed of rent-service, rent-charge, and rent-seck; but of an annuity that charges only the persons, she shall not, nor shall she if the freehold of the rents, common, &c. were suspended before the coverture, and continue so during the coverture; but if, after coverture, the husband do extinguish them, as by release, she shall be endowed of them. Moreover, a woman shall not have dower of an estate wherein her husband had not the legal, but only an equitable interest, nor of lands whereof she has levied a fine, or suffered a recovery during coverture.

Tenants in
dower.

Co. Lit.
p. 31, b.

Ib. p. 32.

Pigott of Re-
coveries,
p. 66.

By Mag. Charta, c. 7. the widow may remain in the chief house of her husband for forty days after his death, within which time her dower shall be assigned to her; but if that house be a castle, and if she shall leave the castle, a house competent for her shall be immediately provided for her, in which she may dwell till her dower is so assigned. These forty days are called the widow's quarentine, and the lands to be held in dower must be assigned by the heir of the

2 Bl. Com.
p. 135.

Tenants in
dower.

husband, or his guardian, to entitle the lord to demand his services of the heir for the lands so holden. If her dower is not assigned fairly, and within the forty days, she has her remedy by writ of dower, and after judgment, the sheriff, by a writ of execution, will be commanded to assign it. If the thing of which she is endowed is divisible, her dower must be set out by metes and bounds; if indivisible, she must be endowed specially, as of the third presentation to a church; the third toll-dish of a mill; the third part of the profits of an office, of stallage, or a fair; the third part of a dove-house or a fishery; and the surest way of taking dower of tythes is by every third sheaf, &c.

A woman loses her dower if she detains the title deeds, or evidences of the estate from the heir, until she restores them; and by the statute of Gloucester, if she aliens the land assigned her, she forfeits it *ipso facto*, and the heir may recover it.

Questions formerly arose, not unfrequently, at county elections, as to the right of those who had married widows entitled to dower, to vote, where the dower had not been assigned and set out by metes and bounds; and the practice, I believe, was pretty generally to exclude them from voting, as was done in the Gloucestershire case in 1777. But the 20 Geo. III. c. 17. s. 12. puts

Gloucester,
P. 45.

puts an end to all questions in most cases upon this point, for it enacts, that "where any woman, "the widow of any person tenant in fee, or in "tail, shall be entitled to dower or thirds by the "common law, out of the freehold estate of which "her husband died seised or possessed of, and shall "intermarry with a second husband, such second "husband shall be entitled to vote in respect of "such dower or thirds, if such dower or thirds "shall be of the clear yearly value of forty "shillings, or upwards, although the same has "not been assigned or set out by metes or "bounds, if such second husband shall be in "the actual receipt of the profits of such dower, "and the estate from whence the same issues is "rated to and contributes to the land tax in the "name of the actual owner of the lands or tenements from whence such dower or thirds arises "or issues."

It is observable that this provision extends only to the persons who have married widows entitled to dower out of the freehold estates of which their husbands *died seised or possessed*, but does not take in such estates as the first husband had been seised of and conveyed away, or otherwise disposed of in his life-time. These estates, therefore, not being included in the act, the right of persons who have married widows entitled to dower out of them, must, as far as may be material

Tenants in
dower.



material to the right of voting, be left as at common law before the act passed. Without the aid of the act of parliament, which only recites that doubts had been entertained, it should seem that the second husbands, who have married widows entitled to dower unassigned, could not possibly support their claim to vote.

Tenants for
life.

4. Tenant for life, the lowest description of freeholders, is where a man holds lands or tenements for the term of his own life; or for that of another person, and then he is called tenant *per auter vie*; or for more lives than one.

2 Black,
Comm.
p. 120.

Co. Litt.
p. 42.

This estate may be created either by express words, or a general grant, without defining or limiting any specific estate; and such grant, or a grant for term of life, without mentioning of whom, shall be an estate for life of the grantee; and so of the declaration of an use. But though, generally speaking, such an estate will enure for the life of the grantee, there are some estates, deemed estates for lives, which may be determined before the life for which they are granted expires; as if an estate be granted to a woman during her widowhood, or *quamdiu se bene gesserit*, or to a man and a woman during coverture, or as long as the grantee dwell in such a house, or so long as he pays £. 10, &c. or until the grantee be promoted to a benefice, or for any like uncertain time, which is, as Bracton expresses it, *tempus undeter-*

minatum; yet all these are reckoned estates for life, because they may by possibility last for life. So if a person make a lease of a manor, which at the time of making the lease is £. 20 a year, until £. 100 is paid, because the annual profits are uncertain; but if a man devises a manor to his executors for payment of debts, and till his debts are paid, it is but a chattel interest, and the executors cannot vote. And tenants by statute merchant, by statute staple, and by elegit, have uncertain interests in the premises, yet they have not freeholds; and so it is with guardians in chivalry, which hold over for single or double value. A man bequeathed land to his widow, until his daughter came of age, in trust then, as to part of the land, to her own use. Henry Turner married the widow, the daughter not being of age, and the Gloucestershire committee determined, 7 to 6, that he had no right to vote.

Tenants
for life.

Gloucester,
p. 190.

The following case came before the Bedfordshire committee. One James Conquest married a widow who was entitled to an estate tail in lands, but before marriage he had covenanted with one R. V. (a friend of hers) in a deed to which they were all parties, not to intermeddle with the rents and profits of the estate, but that they should remain to the separate use of the wife; and that R. V. should receive the rents for her use, and have the sole management of the estate, subject

2 Luders,
p. 422.

Tenants
for life.

subject to her controul, and that she might devise or dispose of it as she thought fit, and that he (the husband) would join in all necessary acts to render effectual her disposition of it. The tenant produced a receipt of the wife for rent, and the committee held that the husband had not such an interest in the land as gave a vote.

A lease for a life is determined by the *civil* death of the tenant, as by entering into a monastery; and it is to prevent terms from being so determined, that it is now the general practice of conveyancers to make them enure for the *natural* lives of the persons mentioned in the grant.

A man may have an estate for term of life determinable at will, as where the king grants an office to one at will, and grants him a rent also for the exercise of his office for term of life; this is determinable on the determination of his office, and so not a freehold.

No estate below an estate for life is a freehold, or requires the solemnity of a conveyance by livery of seisin. And an estate for any term of years, however long, determinable upon lives, though in the common course of human life it must last them out ten times over, is not a freehold, but a lease for years, determinable on a life or lives.

5 Rep.
p. 94, b.

A freehold by the common law cannot be
created

created to commence *in futura*, but must take place *directly*, either in possession, remainder, or reversion. But a person seised of a freehold interest, though it is only in reversion or remainder, may vote if he receive 40 s. rent from it in possession; but if lands are let to a person for life, reserving no rent, or less than 40 s. by the year, the grantee cannot vote during that term; but if he lets such lands only for term of years, without any rent at all, or under 40 s. per annum, reserved, he may vote in respect of the freehold in him.

Tenants
for life:

Dalton,
P. 334.

Where Richard Sharman had voted for premises which had been conveyed in the reign of Queen Elizabeth for 1,000 years, but which in 1700, one Bailey (under whom the voter claimed) had granted in fee, he was held by the Gloucestershire committee, *nem. con.* to be a good vote. But, without the lapse of time to corroborate the title, the mere conveyance of a chattel interest, as if it was a freehold, will not give a right to vote. Thus Paul Sylvester had voted under a deed conveying a remainder of a chattel interest of ninety-nine years, as if it had been a freehold; and it was held that he had no vote*. Lands were conveyed to the father and mother of A.

Gloucester,
P. 183.

Gloucester,
P. 182.

Ib. p. 30.

* This case is imperfectly reported in the book from which it is cited.

**Tenants
for life.**

**Gloucester,
p. 13, 14, 15.**

for life, with power of appointment; they jointly appointed to A. in fee. This was held to operate as a good appointment of the father for *his own* life, and so A. had a freehold, and might vote.—Lands were devised to A. “during her widowhood, and “no longer, or for her life;” the testator’s eldest son, as heir at law, has a right to vote on the second marriage of his mother, determined 8 to 5; but his second son has no right to vote, determined 12 to 1.

**Equitable
freeholds.**

*See 1. Ind.
149. as to equi-
table freeholds
in the case
of borough
elections, &
as to the diffe-
rence there
is betw. such
elections &
those for war-
ties in this
head. See
also Henry
on Par. Elect.
300.*

*Co. Litt. 272.
b.*

The doctrine of uses and trusts was wholly unknown at common law; but the convenience attending it was, soon after its introduction, almost universally felt. The statute of the 8 Hen. VI. requiring a person to have freehold tenements to the value of 40s. per annum, has always been confined to persons having the legal estate in freehold tenements of that value; and, in consequence, if the law had been strictly enforced, after uses became common, the greater part of the landholders of England must have been disqualified. Lord Coke’s observations upon the statute 2 Hen. V. ft. 2. c. 3. strongly illustrates this. That act provides, that to be a juryman in certain cases, a person ought to have lands or tenements of the annual value of 40s. besides the reprises thereof; and he observes, that, owing to the troubles occasioned in this country by the quarrels between the houses

Equitable
freeholds.

houses of York and Lancaster, the greatest part of the lands in England were, at the making of this statute, *in use*; and although in law the land was in the feoffees, yet, because they had it but in trust, and *cestui que use* took the whole profits: the judges extended this law, which is a remedial one, by equity, against the letter of it, to the *cestui que use*, and not to the feoffees. How far in like manner the judges might have extended the 8 Hen. VI. by equity, is not the question now; those tribunals by which it has been construed, having taken the contrary line, and confined it strictly to the letter.—The legislature at length, when contests for counties grew more frequent, and the rights of voters were more strictly scrutinized, found it necessary to remove a disqualification, which affected a vast number of freeholders, and enacted that “no person or persons shall be allowed to have any vote in election of members to serve in parliament, for or by reason of any trust estate, or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate; but that the mortgagor or *cestui que trust* in possession, shall and may vote for the same estate notwithstanding such mortgage or trust.” Upon this clause must be founded the right of every person claiming to vote for a trust estate.

by 7. & 8. W. 3. ch. 25.
s. 7.

Most

Equitable
freeholds.

Gloucester,
p. 130, 131.

Ib. p. 184.

2 Luders,
p. 431.

Most of the questions relating to trust estates, which arise at county elections, will admit of easy solution, if the relative situation of the parties be attended to. When it is once settled, whether the person claiming to vote is the trustee, or *cestui que trust*, the difficulty will be in general removed. Sometimes indeed a question may arise as to who is to be considered as the *cestui que trust*, as in the following instance. A father, by will, bequeathed an estate to trustees, to pay out of the profits thereof 6s. per week to his son John Lawrence (whom he considered as an idiot) with the reversion to his son Thomas, on the death of John, or his giving security to the trustees to pay the 6s. per week, which he had not done. It was held by the Gloucestershire committee, that Thomas had not such an interest in the premises, as entitled him to vote, but that John had. So a bare permission or authority to receive the rents and profits of an estate, unconnected with the legal interest in it, gives no right to vote; as where a voter had sold his estate to a person, who at the sale executed a bond to permit him to receive the rents and profits for life, it was resolved, *nem. con.* by the same committee, that he had no right to vote. Still less will the receipt of the rents and profits of an estate by a stranger, give a vote, or disqualify the real owner of the estate. So in the Bedfordshire committee it was resolved, that

that the devisee of an estate had a right to vote, though the tenant considered another as his landlord, and had actually paid rent to him, for it should be presumed, that the person to whom he paid rent, was only tenant to the devisee.

Equitable
freeholds.

In the case of John Bonfield, where the devisee of an estate charged with an annuity had by parol agreed to give up the estate in satisfaction of the annuity, and had put the annuitant in possession of the estate, it was held the annuitant had a right to vote for it. ^{2 Luters,} P. 440.

An estate had been devised by James Smith's father, to his eldest son Thomas, in trust to pay legacies to the younger children. Thomas refused to take the land, subject to the trust, and the younger children, with his consent, took possession of certain parcels of the land, in satisfaction of their legacies. James had been in possession of his freehold in this way for five years, and his vote was held good. For he must be considered as a purchaser for a valuable consideration. ^{Ib. p. 424.}

Questions upon equitable purchases must frequently arise at county elections; it may, therefore, be proper to make a few observations upon them. Where a person has agreed to sell, and another has agreed to purchase certain premises, and that agreement has been reduced to

F

writing,

Equitable
freeholds.

Gloucester,
p. 82.

writing, whether under stamp or not*, the vendee being in possession of the estate, and taking the rents and profits by virtue of the agreement, seems to have an equitable freehold, and to have a right to vote. Thus where William Parry had articted to sell his estate, and had actually put the purchaser into possession, more than twelve months before the election, but the purchase-money was not paid, nor the purchase completed, the Gloucestershire committee resolved, 8 to 5, that William Parry, and not the purchaser in possession, was entitled to vote. Here, though the purchaser might have compelled a specific performance of the contract of sale, yet, until that was done, the legal estate rested in William Parry, who, until the purchase-money was paid, was not the trustee of the purchaser, but the purchaser his trustee; and then, by the above clause, he, as the *cestui que trust*, was rightly determined to have the right of voting. Neither in this or the following case, does there appear to have been any agreement that the purchaser, though put into possession, should take the rents

* By 23 Geo. III. c. 58. all agreements for the sale of lands, and many other things, must be stamped within twenty-one days after they are entered into; but it has been solemnly determined, both in the Court of Exchequer and Chancery, that, upon payment of the penalty, an agreement may be stamped, at any time after the twenty-one days are expired.

and profits to his own use, for if there was, the determination in both probably would have been different. John Hinton purchased a freehold in 1774, and was put into possession, but the vendor did not execute any conveyance till 1776, within less than twelve months before the election, and the same committee held that the vendee had not a right to vote. In other words, they considered him as only trustee for the vendor, until the legal conveyance was made; and if they were right in this idea, the act certainly excluded him. The Bedfordshire committee came to a resolution, which standing unexplained, seems to be directly contradictory to this. One William Smith had been in possession of his freehold more than a year before the election, under a contract for the purchase of it, but *all* the purchase-money was not paid, nor the conveyance executed till six months before the election, and his vote was allowed; if the circumstances of the two cases had been fully stated, it is very probable that they would have been perfectly consistent with each other; for, in the latter case, there might have been an agreement that the vendee should be in receipt of the rents and profits; in Hinton's case the vendor might be entitled to them.

John Jackson had agreed, before the election, for the sale of his freehold, as from Lady-Day, 1784, thirteen days before the election, but he

Equitable
freeholds.

Gloucester,
p. 163.

2 Luders,
P. 540.

2 Luders,
P. 427.

Equitable
freeholds.

would not execute the deeds, because he had promised to vote. After the election he executed the conveyance, as from the Lady-Day preceding, and an attornment as tenant to the purchaser from that day; and his vote was disallowed.

In truth, the question in this and other cases seems to be, Who is to have the rents and profits of the estate, by virtue of the agreement, until the legal conveyance is made? for if they belong to the vendee under such circumstances as that he can compel a specific performance, the vendor is trustee of the legal estate for him; but, on the contrary, if they belong to the vendor, though the vendee is in possession of the premises, he clearly is not entitled to vote, by the 7 & 8 Will. III. c. 25. In many cases, whether the vendee shall be trustee, or *cestui que trust*, may depend upon, whether it is through the default of the vendor that the legal estate has not been conveyed.

So much of the statute of the 7 & 8 W. III. c. 25. as relates to mortgagors in possession of estates, where the surplus rents do not amount to 40*s.* *per annum*, after payment of the interest, will be considered hereafter.

Jointenants,
and tenants
in common.

Jointenants and tenants in common of freehold estates, and for freehold interests, have a right to vote; for the former are seised individually,
per

per my & per tout; the latter have each a separate interest in their respective shares. But the 7 & 8 W. III. c. 25. s. 7. has provided, that no more than one single voice shall be admitted for the same house or tenement.

Jointenants,
and tenants
in common.

Corporations are divided into *aggregate* and *sole*. Corporations aggregate consist of several persons united together into one society, kept up by a perpetual succession, so as to continue for ever; of which kind are the head and fellows of a college, and the dean and chapter of a cathedral church. Corporations sole consist of one person only, and his successors, incorporated to give them perpetuity, and some other legal advantages, which, in their natural capacities, they could not have had. Thus the King is a sole corporation, so are some deans and prebendaries distinct from their several chapters, and so is every parson and vicar. The freehold of lands belonging to an aggregate corporation is vested in the corporation itself, and not in the individual members of which it is composed; and therefore such corporators have not a right to vote for the lands of the corporation, for they have not such an estate in them as the law requires. With respect to sole corporations the law is different*.

Corporations.

1 Black.Com.
p. 469.

With

* Lord Coke, in his commentary upon the 14th section of Magna Charta, beginning “*Liber homo non amer-*

2 Inst. p. 27.

F 3

“*cietur,*

Corporations
aggregate.

1 Journ.
p. 798.

With regard to corporations aggregate, I do not find that the individual members of which they are composed, have ever been permitted to vote for the estates of the corporation. County of Cambridge, May 28, 1624. Mr. Glanville made the report of the committee. It appeared that the freeholders complained that the scholars, and fellows of colleges and halls, and parsons and vicars, came and gave voices at the election; and the House agreed with the committee in resolving, "upon question, that members of
" colleges, halls, or corporations, not having
" freehold, saving in right of their colleges,
" halls, or corporations, ought not to have voice
" in elections of knights or burgessees." And, upon a second question, "that fellows and
" scholars, that have fellowships and chambers
" above 40s. ought not to have voice in elec-
" tions." And also, "upon question, that par-
" sons and vicars, that have no other freehold
" but glebe lands, ought not to have voice in
" elections." By another entry of the proceedings on this election, it appears, that the second resolution was supported in the House by these

1 Journ.
p. 714.

"*citur*," &c. on the words *Liber homo*, says, "The
" words of the act being *liber homo*, it extendeth as well to
" sole corporations, as bishops, &c. as to laymen, but not
" to corporations aggregate of many, as mayor and com-
" monalty, and the like, for they cannot be comprehended
" under these words *liber homo*," &c

arguments ;

arguments*: "He that hath a chamber cometh
 "not in by livery and seisin, nor by deed en-
 "rolled; no assize lieth; the freehold of it is in
 "the corporation; his fellowship like wages and
 "diet given a servant." Here the personal dis-

Corporations
 aggregate.

ability of the fellows, scholars, parsons, or vicars,
 as being clergymen, was not in question; but it
 was taken for granted, that, if they had a proper
 freehold qualification, they had a right to vote.

Dalton, in conformity to the first of these reso-
 lutions, lays down, as the law in his time, that
 fellows of colleges in universities have no vote,
 by reason of their chambers, or other avails, &c.

Dalton,
 P. 334.

in the colleges. So, before the Gloucestershire
 committee, it appeared, that there were twelve
 vicars of Hereford, with the custos, who aggre-
 gately enjoyed £. 103 *per annum*. The custos
 divides the rents as they come in, taking a double
 share for himself, the rest having an equal share
 each. And it was resolved *nem. con.* that Dr.
 Stone, being part of a corporate body, composed
 of a custos and eleven vicars of Hereford, had
 not a right to vote for his part of the estate vested
 in the corporation. And, in the Cricklade case,

Gloucester,
 P. 136.

2 Luders,
 p. 358.

* The proceedings on this report are entered as of the
 same day, in two parts of the printed Journals of the House
 of Commons, viz. at pa. 714 and pa. 798 of the first volume.
 The second entry of the resolutions is most correct and full,
 but I have extracted this note of the arguments used in the
 debate from the first entry.

Corporations
aggregate.

in 1785, an objection was made to the votes of the twelve burgessees of Malmesbury. They held each a parcel of land, in right of their burgesships, in some measure like the prebendal rights in chapter lands. It was argued, that the lands belonged to the corporation aggregate, and not to the individual members of it; but the committee did not come to any determination.

2 Luders,
P. 541.

Thomas Shepherd, one of the bailiffs of Bedford, succeeded to his freehold, in right of his office, upon the death of the last possessor, a few months only before the election. As his vote was, in the list of objections, objected to only for want of a due assessment, and his freehold being under value, this point was not gone into, and his vote was admitted.

Corporations
sole.

It has never been disputed, that persons, being sole corporations, have a right to vote at the elections of knights of the shire, for lands which they hold in their corporate capacity, i. e. to them *and their successors*, not to them *and their heirs*. The inclination of the House of Commons has generally been to enlarge the franchise of voting, and increase the number of electors; it may have, therefore, been thought a distinction too refined to contend, that a privilege, merely of a personal nature, ought to be annexed only to lands which a man holds in his personal capacity, and that his corporate possessions cannot give him individual rights.

Upon

Upon the genuine principle of the English Constitution, that property, (not the persons of those who possess it,) shall be represented by those who have a right to burden it with taxes, the clergy, though sole corporations, and possessed of glebe lands, were not permitted to vote; for those glebe lands were represented and taxed, not in parliament, but in convocation. The resolution in the Cambridgeshire case, "that parsons and vicars, "that have *no other* freehold but glebe lands, "ought not to have voice in elections," raises, however, an inference, that they were not *personally* incapacitated, but that, if possessed of other freehold than glebe lands, they were entitled to vote as well as any other freeholders. In about forty years after the case of the county of Cambridge, a very material alteration took place in the situation of the clergy. They had usually met in convocation, at the same time with the parliament, and had levied taxes on their own body, separate and distinct from those imposed on the laity. The influence of the King, by reason of the ecclesiastical preferments he had to bestow, was generally greater over the clergy than the laity; and consequently the subsidies voted by the convocation were usually greater than those voted by the parliament. During the time of the rump parliament, the clergy of the then established church were taxed by a land and poll

Hume, p.

Gilb. Exch.
p. 56.

Clergy.

poll tax, in common with the laity, and, in common with them, were allowed to vote at the election of members of parliament. After the Restoration, when the hierarchy of the church of England was re-established, the ministers of Charles the II^d, finding the mode of levying taxes by subsidies unproductive, formed the design of continuing the system of taxation, which had been introduced during the troubles; and the clergy made no objection. Motives of policy also might operate to procure a favourable reception for this innovation, for it was known that the principal power of the sectaries lay in the House of Commons; and, by this masterly stroke, the King and the Church secured nearly as many votes at the elections of knights of the shire, as there were beneficed clergymen in each county. The informal and secret manner in which this important change in the constitution of parliament was introduced, strongly confirms the suspicion, that corrupt motives were at the bottom. For it was first settled by a verbal agreement only, between Archbishop Sheldon and Lord Clarendon, which was tacitly agreed to by the clergy in general.—The first act of parliament by which this agreement was enforced, was an act passed in the year 1664-5, (16 and 17 Car. II. c. 1.) intitled, “An act for granting a royal aid to the King’s Majesty,” by which a new tax was levied on the clergy,

² Hatfield’s
Precedents,
p. 8. note.

clergy, in common with the laity; and in return the clergy were expressly discharged from the payment of two out of the four subsidies which they had before granted in convocation*. In an act of the same session, (16 and 17 Car. II. c. 3.) "for granting a subsidy to his Majesty," there was a saving of the right of the clergy to tax themselves in future, if they thought fit, in convocation†; and so there was also in the 22 & 23 Car. II. c. 3. In consequence of this, &c. "the clergy have assumed, and without any objection have enjoyed, the privilege of voting in

Clergy.

2 Hatfell,
P. 10.

* It was provided by this act, "that all spiritual promotions, and all lands, possessions, or revenues, annexed to, and all goods and chattels growing or renewed upon the same, or elsewhere, appertaining to the owners of the said spiritual promotions, or any of them, which are or shall be charged or made contributory, by this act, towards the payments aforesaid, during the time therein appointed, *shall be absolutely freed and discharged from the two last of the four subsidies granted by the clergy to his Majesty, his heirs and successors, made in the former session of this present parliament, entitled, An act for confirming of four subsidies granted by the clergy, any clause or thing in the said act to the contrary notwithstanding.*"

† This clause was as follows: "Provided always, that nothing herein contained shall be drawn into example, to the prejudice of the ancient rights belonging unto the Lords spiritual and temporal, or *clergy of this realm*, or unto either of the universities, or unto any colleges, schools, almshouses, hospitals, or cinque ports."

"the

Clergy.

“ the election of members of the House of Commons, by virtue of their ecclesiastical freeholds,” as they did *in the rump times*. Conformably to this alteration of the constitution of parliamentary representation, Dalton, who wrote his book about the time of the Restoration, and could hardly be supposed ignorant of the before-mentioned resolution in the Cambridge-shire case to the contrary, expressly says, that clergymen, for their spiritual livings, have votes.

Dalton,
p. 334.

This right in the clergy has been impliedly recognized by several modern statutes. The 10 Ann. c. 23. assumes, that a parson, by presentation to a benefice, may obtain a right to vote; for it enacts, that no person shall vote in respect of lands and tenements which have not been charged or assessed, &c. and for which he shall not have received the rents or profits, &c. for one year before such election, unless such lands or tenements come to such person within the time aforesaid, by descent, marriage, marriage-settlement, devise, or *presentation to some benefice in the church*, or by promotion, &c. The 12 Ann. c. 5. which repeals so much of this clause as relates to the rating, shews that the words *lands and tenements* in the former act, include rents, tythes, and other hereditaments; for it recites, “ that some doubts had arisen, whether parsons,
“ vicars,

“ vicars, and other persons, having messuages,
“ lands, rents, tythes, or other hereditaments, are
“ not thereby restrained from voting in such elec-
“ tions, in regard that such messuages, lands, rents,
“ tythes, or hereditaments, have not been usually
“ charged, &c.” So that from the 12th Anne,
taken with the prior act, it is clear, that the
legislature then considered the right of parsons
and vicars coming to lands, rents, tythes, &c.
by presentation to a benefice, to be clear and un-
disputed. That act then provides, that the 10th
Ann. shall not restrain persons from voting in
respect of rents, tythes, or other incorporeal
hereditaments, &c. where they have not been
rated as required by that act, by reason that they
have not been assessed to all the public taxes
therein mentioned, provided they have been
charged to some one or more of the said public
taxes, &c. By the 18 Geo. II. c. 18. s. 2. this
clause of the 12 Ann. is repealed; and, by sec-
tion 3, no person shall vote for any *messuages*,
lands, or tenements, which have not been assessed
to the land-tax twelve calendar months next
before such election. But the first section of that
act also requires each freeholder to swear, that
he has been in possession, &c. whether “ mes-
“ suage, land, rent, tythe, or what else,” above
twelve calendar months, or that it came to him
by descent, &c. *promotion to a benefice in the*
church,

Clergy.

church, &c. and the fifth section, upon which the oath is founded, requiring the voter to have been in possession of his freehold for twelve months, has words equally strong. The 20 Geo. III. c. 17. which reduces the twelve months to six, for which a freehold must be rated to the land-tax before the election, makes no alteration.

Deans and
chapters.

God. p. 52.
Johnf. p. 61.

Questions may arise as to the right of the deans and chapters of cathedrals to vote for the lands belonging to their churches. In general the dean has one part of the annual income, in right of his deanery, and each prebendary a certain portion also, in right of his prebend; the residue is divided equally among the dean and prebendaries; so that the dean and each prebendary is a corporation sole, as having a distinct estate, while, in respect of his vote in the chapter, he is a member of a corporation aggregate. Where such a division of the profits of their estate as that just stated takes place, the dean and prebendaries, as corporations sole, have votes for knights of the shire; thus the prebendaries of Westminster always vote at the elections in Middlesex. But, in some places, the dean and prebendaries do not take any part of the estates, or their income, to their separate use, but divide the whole among them, and then they have no right to vote; such, perhaps, is the case in the cathedral church at Gloucester;

Gloucester; for, in the list of votes objected to at the election in 1777, are "four prebendaries of Gloucester."

Deans and
chapters.

Dalton says, that gentlemen of the houses of court or chancery are holden to have no voices at county elections, by reason of their chambers there; but this requires explanation. The tenure by which the gentlemen of the houses of court or chancery hold their chambers, is not like that by which fellows of colleges hold their chambers; for they hold them to their own separate use, as lessees under, and not as part of the public body. In general, however, they do not give a right to vote for the county of Middlesex, either because they are not locally situated within those parts of the county which alone have the right of voting, or because the societies who grant them have only a chattel interest in the premises. Several gentlemen of Lincoln's Inn, against whose right in these respects no objection lies, vote at every county election for their chambers.

Gentlemen
of the inns of
court.

Dalton,
p. 334.

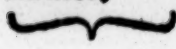
In the case of the county of York, 22 April, 1736, the counsel for the petitioner, in summing up the evidence, and stating the votes that had been disqualified, mentioned "several as having no estate at all—as being schoolmasters — parish clerks — curates, &c." If, by virtue

Schoolmas-
ters, parish-
clerks, and
curates.

22 Journ.
p. 696.

of

Schoolmas-
ters, parish-
clerks, and
curates.



of their respective offices, they enjoy any freehold lands, or rent charges issuing out of such lands, for which they claim to vote, their right depends upon the interests they have respectively in their offices. If they enjoy them as *sole corporations, for life, or quamdiu se bene gesserint*, they have a right to vote at elections. Schoolmasters and parish clerks generally hold their places for life*, but curates (not applying the appellation here to those who hold perpetual curacies) are as generally removeable at the will of those clergymen who appoint them. Hence schoolmasters and parish clerks, seised of lands by virtue of their offices, are usually admitted to vote, and curates not.

2 Luders,
p. 428.

In the Bedfordshire case, James Taylor, the schoolmaster of Sharpenhoe, received 10*l.* a year, under a will, made in 1686, which had these words: "The schoolmaster and children, from time to time, to be put in and placed there by the approbation and good-liking of J. N. and his heirs." Two recent instances were proved, in which the masters had been removed without any cause assigned. The vote was held bad; but there was another objection besides the want of

* By the Bedfordshire committee, schoolmasters were always presumed to have estates *for life*, unless the contrary appeared from the nature of their appointment.

freehold,

freehold, viz. that he was not duly assessed. The appointment of the schoolmaster of Houghton Conquest recited, that "no person, qualified according to the will of the founder, had offered himself for the place; and that, therefore, the master and fellows" (of Sydney Sussex College, in Cambridge,) "at the request of the rector and inhabitants of the parish, did appoint William Irons, (the voter) to supply the place, *till a person properly qualified shall offer;*" and his vote was held bad.— But in the case of two schoolmasters, whose appointment belonged to the lord of the manor of Stratton, who thought he had not power to remove the masters he had once appointed, their votes were held good.

Schoolmasters, parish-clerks, and curates.

2 Luders, P. 429.

Ibid. p. 430.

Philip Turner voted for a rent charge upon the estate of the Rev. Mr. Hawkins, the rector of Ampthill, who, under a deed settling an estate on the rector for the time being, on condition that he should "apply, out of the rents, 5*l.* a year to *one or more* schoolmasters, or schoolmistresses," for educating sixteen children, had appointed the voter to the trust; and said, he did not know that he was impowered to turn out after he had appointed, and knew no instance of any being displaced. The vote was held good.

Ibid. p. 431.

Schoolmasters, parish-clerks, and curates.

The ground of the objection made at the election for Yorkshire, in 1736, against the votes of schoolmasters, parish clerks, and curates, was, "as having no freehold;" but it does not appear whether they were objected to as enjoying offices to which no land at all was annexed. The salary of a curate, whether perpetual or temporary, is not derived from either lands or tythes, but is only a stipend or allowance paid by the beneficed minister in the one case, and the impropriator in the other. And the statute 1 Geo. ft. 2. c. 10. giving perpetual succession to such ministers who come in "by donation," or are only stipendiary preachers or curates," makes no alteration in this respect. How far they have a right to vote in respect of their curacies, as offices not deriving salaries *out of land*, has never been discussed.

Dissenting Ministers.

Exactly upon the same footing as temporary curates, are Protestant Dissenting Ministers.— They have no freehold in their offices, but are removable at the will of their respective congregations. When, therefore, they are possessed of land *virtute officii*, they have not an estate of freehold; they hold at the will of others, and are excluded from voting. Of late it has been argued, that, after they are chosen by their congregations, they are in office *quamdiu se bene gesserint*,

gesserint, and cannot be ousted but for misconduct in the duties of their office, such as would justify the deprivation of a minister of the established church. Two or three instances, indeed, may be mentioned, in which Dissenting Ministers have set their congregations at defiance, and held their pulpits against the inclinations of their hearers. The following resolutions of committees prove, that such conduct was not supposed to be justified by the general usage among the Dissenters. In the Gloucestershire committee this point was argued at much length, and maturely considered. It was mentioned, as a report, "that Dissenting Ministers voted in the great Oxfordshire contest;" but a motion, "that Samuel Thomas, enjoying, as Dissenting Minister of the chapel of French Hay, an annuity of 15*l.* a year, by virtue of a deed of trust, to the sole use and benefit of Thomas Tyler, so long as he shall live, and supply the cure in the chapel of French Hay; and, after his death, or ceasing to serve the cure, then in trust, to apply the said annuity towards finding and providing another good, learned, and pious divine, of the Presbyterian persuasion, to preach and supply the cure of French Hay, so long as the said chapel shall be tolerated, had a right to vote at the last election for the county of Gloucester," passed in the negative, 8 to 5. And in another

Dissenting
Ministers.

Gloucester,
176. 95. 96.
97. 98.

Dissenting
Ministers.

Gloucester,
193.

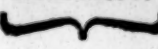
z Luders,
p. 432.

Pa. 83.

case, a motion, " that Nathaniel Phillips, as
" minister of the congregation of Tewkesbury,
" being in possession of an house, left by the will
" of Mary Workman to the minister for the
" time being of the congregation of Dissenters
" in Tewkesbury, the rent thereof to be taken
" by them, from time to time, had thereby a
" right to vote," was also negatived, 8 to 5. And
these resolutions were adopted in the Bedfordshire
case. One William Dickins had been minister
of a dissenting congregation at Keyfoe upwards
of twenty years, in right of which, besides volun-
tary contributions, he enjoyed two houses and an
orchard, of greater value than 40s. a year, and
he was regularly assessed to the land tax. Two
members of the congregation being examined as
witnesses, said, they did not understand the con-
gregation had a power to remove their minister,
nor had any ever been removed. On one
side it was contended this voter had not a free-
hold estate for life, but held a place, with per-
quisites annexed, at the will of the congrega-
tion; and the case of Gloucestershire was cited.
On the other side it was said, he held not during
pleasure, but *quamdiu se bene gesserat*, and there-
fore he had a freehold interest. And the King
and Barker, 3 Burr. 1265, and the King and
Bruniges, (Dr. Wachsell's case) in Easter Term,
1780, were cited; in the former a mandamus

to *admit*, in the latter a mandamus to *restore* was granted. And it was observed, that in Chadwick and Smith, argued in the court of King's-Bench, in Easter and Trinity Terms, 1783, the court, before they granted a mandamus to admit, directed an issue to try the merits of the election. The committee disallowed the vote.

Dissenting
Ministers.



C H A P. IV.

OF THE ANNUAL VALUE OF THE FREEHOLD
ESTATES OF ELECTORS.

THE different statutes relating to the value of the freehold which entitles its owner to vote, have been already mentioned ; by the last of them, the 18 Geo. II. c. 18. s. 5. a voter must have a freehold estate in the county for which he votes, of the clear yearly value of 40*s.* *over and above all rents and charges payable out of, or in respect of the same.* Here it may be material to consider two points, 1st. how the yearly value of the estate is to be ascertained, and 2d. what are the charges and deductions to be made from it.

Annual value
ascertained.

2 Luders,
p. 450.

Ib. 470.

Upon the 1st point the Bedfordshire committee came to a general rule, that the value of a landed estate, in right of which the owner votes, is the rent which a tenant would give for it, and not what the owner, occupying it himself, may possibly acquire from it. And after the above resolution, the constant mode of ascertaining the value of an estate was, if it had not been let,

let, by examining neighbours, farmers, and others, who were acquainted with the lands, and inquiring into the amount and proportion of the public and parish taxes they were charged with. Where lands were let, the rent was in general considered as only one mode of estimating the value, but not so conclusive as to exclude other means of information.

Annual value
ascertained.

One mode devised by the legislature of ascertaining the value of the lands or tenements for which a person should be entitled to vote, was by making the proportion paid to the public taxes the measure of the value thereof; this was done by the 10 Ann. c. 23. s. 2. which enacted, that “ no person shall vote for the electing of any
“ knight of a shire, within that part of Great
“ Britain called England, in respect or in right
“ of any lands or tenements which have not
“ been charged or assessed to the public taxes,
“ church rates, and parish duties, in such proportion as other lands or tenements of 40s.
“ *per annum*, within the same parish or township wherein the same shall lie or be, are
“ usually charged.”

The 12 Ann. st. 1. c. 5. recites, in the preamble, that “ some doubts have arisen, whether parsons,
“ vicars, and other persons having messuages,
“ lands, rents, tythes, or other hereditaments,
“ are not thereby restrained from voting at such
“ elections,

Annual value
ascertained.

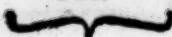
“ elections, in regard that such messuages, lands,
“ rents, tythes, or hereditaments, have not been
“ usually charged or assessed to the public taxes,
“ church rates, and parish duties, and to every
“ of them. Now, forasmuch as *it was only in-*
“ *tended thereby to ascertain the value* of lands
“ or tenements, by making the proportion paid
“ to the public taxes, church rates, and parish
“ duties, or such of them to which the same were
“ usually charged or assessed, *the measure of the va-*
“ *lue thereof*, and for the removing such doubts,”
be it enacted, “ that the said act, or any thing
“ therein contained, shall not extend or be con-
“ strued to restrain any person from voting in such
“ election of any knight of a shire, within that
“ part of Great Britain called England, in re-
“ spect or in right of any rents, tythes, or other
“ incorporeal inheritances, or any messuages or
“ lands in extra-parochial places, or any cham-
“ bers in the inns of court, or inns of chancery,
“ or any messuages or seats belonging to any
“ offices, in regard or by reason that the same
“ have not usually been, or shall not be charged
“ or assessed to all or any of the public taxes,
“ church rates, and parish duties, as mentioned in
“ the above-recited act, or in respect or in right
“ of any other messuages or lands, not herein-
“ before specified, in regard or by reason that
“ the same have not been usually charged or
“ assessed

“ assessed to all and every the public taxes, Annual value
“ church rates, and parish duties aforesaid : ascertained.
“ provided that such messuages or lands have
“ usually been charged or assessed to some one
“ or more of the said public taxes, rates, or
“ duties, in such proportion as other messuages
“ or lands of 40 s. *per annum*, within the same
“ parish or township where the same shall lie or
“ be, are usually charged to the same; any
“ thing in the said recited act to the contrary
“ thereof in anywise notwithstanding.”

These acts of the 10 Ann. c. 23. and 12 Ann. ft. 1. c. 5. extended only to the counties of England; and great inconveniences arising from the numberless questions which were necessarily agitated at every contested election, upon rating of the lands and tenements of the freeholders who claimed to vote; and the purpose for which they were made not having been answered, they were both repealed (as far as relates to this subject) by the 18 Geo. II. c. 18. s. 2. And the freeholders oath, and the inquiry which the sheriff may make of each voter, how much he may expend by the year, are now the only criterions given by any statutes to ascertain the *value* at the poll.

In the case of the county of Pembroke, 32 Journ.
22d February 1770, a freeholder was rejected, P. 721.
who

Annual value
how made
out.



Dalton,
P. 334.

who was tenant for life or lives, under a lease, dated 10th September 1747, and the improved value of the demised premises was more than 40 s. a year, and for this he claimed to vote. The merits of this election were tried before the House, and the question was put, That the counsel for the petitioner be restrained from producing evidence, to prove that the voter had a freehold entitling him to vote, in respect of the tenement leased to him for one or more life or lives in being, under the sole consideration of the rent reserved; but it was moved, and the question carried, to adjourn, 97 to 69, so that the House came to no determination. It does not seem that there was any reasonable ground of objection to the vote of this person; for, if the having of 40 s. rent *per annum*, or an annuity for life of 40 s. *per annum*, issuing out of lands, is sufficient, this must be so too, for it was a rent of 40 s. *per annum*, issuing out of lands during life or lives, provided the improved rent arose from the permanent improvement of the premises.

Common of pasture will not entitle a man to vote; but if he has a freehold house or lands of the value of 30 s. and common appendant thereto of the yearly value of 10 s. or more, it will qualify him; but the house must not have been erected

erected within memory, for common appendant can only be by prescription. In the case of Cambridgeshire, 12 February 1693, several voters were objected to as having freeholds which were not worth 20 s. *per annum*, but might be worth 40 s. to dig, but not otherwise, and it was proved that they were all lands where they were used to dig turf. No specific resolution was made concerning them.

Annual value
how made
out.

11 Journ.
P. 93.

The next subject of inquiry may be into the nature of the rents and charges, to which the 18 Geo. II. c. 18. alludes, when it requires that a voter shall have a qualification *of the clear yearly value of 40 s. over and above all rents and charges payable out of, or in respect of the same.*—Considerable doubts have been entertained, whether a mortgagor in possession has a right to vote, where the surplus of the yearly profits of his freehold, after deducting the interest of the mortgage money, does not amount to 40 s.

Reduced by
mortgage.

See p. 23. &c.

Cardigan county, 22 Mar. 1741.—The numbers were 344 to 340, and evidence was produced against seven of the sitting member's voters; against one the objection was, that he had voted for an estate of £. 10. 10 s. a year, incumbered with a mortgage of £. 100, and a judgment for £. 250. Another was objected to,

24 Journ.
P. 144.

Reduced by
mortgage.

to, because he had voted for an estate worth £. 16 or £. 17 a year, then incumbered with £. 471. 17s. and which had since sold for £. 410 only. The petitioner was declared duly elected, upon a majority made out of the above-mentioned seven votes; but in what manner does not appear.

The case of Wetherell and Hall seems to have been a decision upon a point exactly like this. It was an action on the game laws, tried at the summer assizes 1782, at Durham, before Baron Eyre, and a verdict against the defendant, for the penalty of £. 5. on a count for keeping a gun to kill game, subject to a special case. That special case was argued in the court of King's Bench in Michaelmas Term, 23 Geo. III. and judgment for the plaintiff. Two questions arose; one, Whether the defendant had a sufficient interest in the estate, to give him a qualification; the other, Whether it was of sufficient value. By the 22 and 23 Car. II. c. 25. s. 3. one of the qualifications is, that a person shall have "lands and tenements, " or some other estate of inheritance, in his own " or his wife's right, *of the clear yearly value of* " 100*l. per annum, &c.*" The defendant in the present case was possessed of copyhold lands of the yearly value of £. 103, part of which, of the value of £. 14 *per annum*, was mortgaged for £. 400;

£. 400; it had been surrendered to the mortgagee, who had been admitted. The interest had been regularly paid, and the mortgagee had not entered. After deducting the interest reserved on the mortgage, the defendant had not £. 100 *per annum* left to his own use. The court determined in favour of the defendant on the first point, but judgment was given against him upon the second. Lord Mansfield said, "the mortgagor is owner of the land, and the mortgagee has a charge upon it, and whoever it comes to is his debtor. If a man has a sufficient estate, after paying the interest, he is qualified. It is a charge, and goes with it as much as a judgment or a statute; it is very clear, there can be no doubt of this." Mr. Justice Buller also, in giving his opinion, said, "the only question is, whether the words *clear of all charges*, mean clear value to the person in possession," and he expressed himself strongly in the affirmative.

Reduced by
mortgage.

In the Bedfordshire committee, Richard 2 Luders, Stringer was objected to as having voted for a P. 450.
freehold of £. 9 a year, charged with £. 220; the interest of which sum reduced the annual produce to less than 40 s. a year. The case (which was considered as a new one,) was fully Ib. p. 467.
argued, and the committee resolved, "that the
" interest

Reduced by
mortgage.

2 Luders,
p. 468.

Ib. p. 469.

Ib. p. 470.

“ interest upon a mortgage, the mortgagor still
“ being in possession, is such a charge upon
“ the estate, within the meaning of the statutes,
“ as to affect the rights of the voter.” And
likewise, “ that the counsel be permitted to
“ call evidence to shew that the interest upon
“ a mortgage reduces the clear yearly value of
“ an estate below 40 s. ;” but the fact not being
made out, Stringer’s vote was allowed.

And afterwards the committee, in addition to
the above resolutions, resolved “ that the interest
“ of a mortgage (which is charged upon the
“ estate in right of which a voter voted) being
“ established by evidence, so as to reduce the
“ value of the estate to less than 40 s. *per annum*,
“ does invalidate the vote; and that such evi-
“ dence is conclusive, notwithstanding any other
“ property possessed by the voter.”

In the Cricklade committee, a few days after
the above resolutions on Stringer’s vote, two
cases came on, in the one of which it was ob-
jected that a mortgage, in the other, that the
payment of debts and legacies charged on an
estate by will, would reduce the value below 40 s.
per annum; they both received judgment at the
same time, but received a contrary decision
from that just mentioned; for it was resolved
“ that the mortgagor in possession of lands of
“ the

“ the value of 40 s. a year, and the devisee in
 “ possession of lands of the value of 40 s. a year,
 “ devised subject to the payment of debts and
 “ legacies, are entitled to vote.”

Reduced by
 mortgage.

In a few days afterwards the Buckingham-
 shire committee, in a case exactly the same as
 Stringer's, adopted that decision, and resolved,
 “ that a mortgage is such a charge on land,
 “ as may reduce the value of the freehold below
 “ what may entitle a person to give his vote for
 “ a knight of the shire.” This committee had
 heard evidence upon five cases of votes objected
 to on this account, but this was the only one
 which received a judicial determination.

2 Luders,
 P. 471.

Ib. p. 602.

In the Oxfordshire case, 19 December 1754,
 it appears that one Charles Dent was objected
 to, as “ not having a freehold in the said county
 “ of 40 s. *per annum*.” It appeared that the estate
 had been devised to him, subject to the pay-
 ment of several sums of money charged thereon;
 and evidence was produced to shew that they
 reduced its value to less than 40 s. *per annum*;
 and on the other side, evidence was produced to
 prove that those charges had been paid off. So
 that it must have been admitted on both sides,
 that a freehold estate of greater value than 40 s.
 devised subject to charges which reduce it below
 that

Devise sub-
 ject to
 charges.
 27 Journ.
 p. 63. 146.

Devise sub-
ject to
charges.

pa. 94. 63.

that value, did not give a vote. The Cricklade committee decided, as we have just mentioned, that it did. The words of the act of the 7 and 8 W. III. c. 25. which have been stated already, seem to support the decision of the Cricklade committee, for they are, without any qualification as to the value, that a mortgagor in possession may vote for his freehold estate, notwithstanding it is in mortgage, provided he is in actual receipt of the rents and profits of the estate; in other words, the estate is to be considered as in his possession, so long as he receives the rents, although he pays them over to the mortgagee to keep down the interest. The act does not seem to look to the surplus value of the rents, but to the right of voting, whether it shall be in the mortgagee, who has the legal estate, or the mortgagor, who has the possession. The 28 Geo. III. c. 36. adopted the doctrine of the Bedfordshire and Buckinghamshire committees; and, by sections 6 and 9. required a voter's estate to be *of the clear yearly value of 40s. over and above the interest of any money secured upon it, &c.*; but that act was repealed in the last session of parliament.

+ It was repealed by 29. 4. 3. ch. 13. & repealed by 39. 4. 3. ch. 10. But it deserves being inspected.

Reduced by
taxes.

By section 6. it is provided, that "no public or parliamentary tax, county, church, or parish rate or duty, or any other tax, rate, or

" or assessment whatsoever, to be assessed or
 " levied upon any county, division, rape, lathe,
 " wapentake, ward, or hundred, is or shall be
 " deemed or construed to be any charge pay-
 " able out of, or in respect of any freehold
 " estate, within the meaning and intention of
 " this act, or of the oath or solemn affirmation
 " hereinbefore directed to be administered to,
 " and taken by every freeholder, if required,
 " as aforesaid."

Reduced by
taxes.

John Blackwell received 50 s. a year from his freehold, but the tenant always gave receipts for 30 s. only, in order to deceive the assessors and evade taxes ; it was held a good vote. 2 Luders,
P. 448.

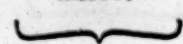
J. Tansley's freehold consisted of land and houses. It was the custom of the parish to assess *land* only, and his land was neither worth, nor assessed for so much as 40 s. a year, but was assessed for rather more than its annual value. It was objected that he had not a freehold of 40 s. a year, assessed to the land tax ; but the vote was held good. Ib. p. 525.

A voter occupied his own freehold, which, without adding to its annual value the amount of the taxes charged upon it, was not worth 40 s. a year, but the sum paid for taxes annually raised it to more. It is not stated what became of this vote ; but it must have been dis- Ib. p. 472.

H

allowed,

Reduced by
taxes.



2 Luders,
p. 475.

Ib. p. 476.

allowed, for the committee negatived a motion, “ that the parochial taxes, when paid by the “ tenant, constitute a part of the rent paid by “ him for the land, and are to be considered as “ part of the income, in right of which the “ owner votes.”—A similar motion, as to the window and house tax, had the same fate; but a resolution, couched in the same terms, concerning the land-tax, was passed in the affirmative.

Ib. p. 448.

John Southwell married a wife, entitled to the sixth part of an estate, let for eight guineas a year; but the tenant was bound to pay for the land-tax 1*l.* 4*s.* and to lay out 3*l.* annually in repairs and improvements. Thus the tenant paid 12*l.* 12*s.* including the two last sums, and a sixth part amounted to 2*l.* 2*s.* The question was, Whether the voter had a sufficient estate? and it was held that he had.

Dower.

Ib. p. 450.

In the Bedfordshire case it was contended, in many instances, that a widow's dower was a diminution of the value; but, where the widow had not received or claimed dower for a considerable length of time, the committee considered that as evidence of her having released it.

C H A P. V.

OF THE PROVISIONS AGAINST FRAUDULENT
AND OCCASIONAL VOTES, AND HEREIN OF
THE SPLITTING OF FREEHOLDS, FRAUDULENT
CONVEYANCES, BEING IN POSSESSION TWELVE
MONTHS, RATING TO THE LAND-TAX, AND
REGISTERING OF ANNUITIES.

WE now proceed to consider the further qualifications requisite to give a person, who is possessed of a freehold estate of 40s. a year, a right to vote. In this chapter we shall confine ourselves to such only as relate to his freehold estate, reserving those of a more general and personal nature for future consideration.

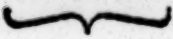
To prevent the splitting of freeholds, to give several persons a right to vote for the same house or tenement, the statute of 7 & 8 W. III. c. 25. s. 7. provides, that “ all conveyances of any
“ messuages, lands, tenements, or hereditaments,
“ in any county, city, borough, town corporate,
“ port, or place, in order to multiply voices, or

Splitting of
Freeholds.

H 2

“ to

Splitting of
Freeholds.



“ to split and divide the interest in any houses or
“ lands among several persons, to enable them
“ to vote at elections of members to serve in
“ parliament, are hereby declared to be void, and
“ of none effect; and that no more than one
“ single voice shall be admitted for one and the
“ same house or tenement.”—This act gives no
criterion by which a returning officer may judge
of the intention of the party, who splits and
divides his interest in any house or tenement; nor
indeed is there any mode pointed out, by which
he can ascertain whether it has been actually so
split and divided. He may, however, according
to modern usage, under the peril of an action,
and of incurring the censure of the House, if he
is mistaken as to the fact, refuse to admit more
than one single vote for any one house or tene-
ment; but, as the question, What is one house or
tenement, or who shall be selected to vote? may
involve difficult points of law, even this discus-
sion, plain and simple as it seems to be at first
sight, may be productive of much trouble and
inconvenience. In all other cases, the construc-
tion of this clause comes more properly before a
committee; and they, exercising the province
both of judge and jury, may find the intention
of the party, and then pronounce the sentence of
the law. No time is fixed, within which, pre-
vious to the election, the conveyance is invali-
dated;

dated; but the committee, laying all the circumstances together, must say, whether, if made *several years*, or only one day, before the election, it was the intention of the party to multiply voices. No length of time protects a transaction from the imputation; nor is it proved merely from its being recent. Hence the tribunals, before which questions of this sort have come, have varied in the construction of the act, as the facts, from which they have had to draw the conclusions, have varied. In the case of Whitchurch, 21st Dec. 1708, twelve years after this act passed, the House laid down a general rule, viz. that all tenements, divided since the passing of the act, should be considered as split to multiply voices; for it resolved, that the right of election there “ is in the freeholders only of “ lands or tenements, in right of themselves, or “ their wives, *not split since the act of the 7th “ and 8th years of King William.*” So in the case of Petersfield, 9th May, 1727, twenty-three were objected to as split votes, since 1695. (7 W. III.) And in the case of Haslemere, in 1775, it was, upon the authority of this case, contended for the petitioners, that all freeholds, of which a unity of possession could be proved till 1696, (when the act of William passed,) but which had been since divided, were to be considered as split within that act, and so incapable

Splitting of
Freeholds.

16 Journ.
P. 52.

20 Journ.
P. 860.

2 Douglas,
P. 326.

Splitting of
Freeholds.

of carrying legal votes. The monstrous absurdity of a proposition, which went to overthrow conveyances of more than eighty years standing, and for which the owners had voted over and over again, at different elections, without objection, must strike every man of common sense. If this doctrine had prevailed, an election of knights of the shire for such a county as Lancashire, where the number of freeholders is so prodigiously increased since the beginning of this century, and many of the great estates have been split into smaller tenements, to answer the purposes of commerce*, might (if the sheriff had authority to examine and judge upon the right of each individual voter) be spun out to the end of the parliament, to which the knights were to be summoned; or, if the merits of the election came by petition before a committee, the lives of the members who composed it, might be spent in the inquiry. The same or greater inconveniences would arise, if, as was contended also before the Haslemere committee, all freeholds, divided since 1696, were to be presumed *prima facie* to have been divided for election purposes, and the *onus* of proving the contrary was to rest upon the voter,

* Some suppose there are near 40,000 freeholders in Lancashire; if so, 30,000 of them may be fairly presumed to be seised of tenements split since 1696.

With

Splitting of
Freeholds.

With more reason the counsel for the same party also insisted, that, from the time that the division of freeholds had become very general in any place, they should be considered as within the operation of the statute, or *prima facie* presumed to be so. Or, (if that were thought too broad a proposition,) that all votes for freeholds, divided about the time of an election, were *prima facie* to be taken to be within the statute, and that the voter must prove the division to have been made *bona fide*, and not to serve the purpose of the election. But great inconveniences might ensue from adopting any of these rules; and the safest line seems to be, that every transaction, by which a larger estate shall be divided into smaller ones, shall be considered singly by itself, and under its own circumstances, and that it shall be presumed to have been a fair and *bona fide* one, until the contrary is proved.—The Haslemere committee came to no resolution as to the voters thus objected to, and determined the sitting member to be duly elected*. The House,

* By determining in favour of the sitting member, it does not necessarily follow, that the committee did not adopt some one of the propositions insisted on by the petitioner; for the numbers were, for the sitting member 61; for the petitioners 40. 35 of the former's votes were ob-

Splitting of
Freeholds.

House, in the following instance, abandoning the rule laid down in the Whitchurch case, adopted another just mentioned, viz. that, from the time the division of freeholds becomes very general in any place, they are to be considered as falling within the statute; but I do not know that it has been followed in any other case.

17 Journ.
p. 664, &c.

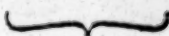
Weymouth and Melcombe Regis, 3d June, 1714.—It was admitted, before the committee of privileges and elections, that freeholders had a right to vote. It was proved, that many voters for the petitioners came from distant places, with conveyances of freeholds within the borough, just written, of which they would give no account, nor whether they were in possession, nor whether the grantors had a freehold. It appeared, that the practice of splitting of freeholds to make votes, began to be notorious in October, 1710;—in 1711, it was carried still further;—and at this election was pushed to a shameful length. The committee had resolved, that those persons, who had no right of voting in the election of members to serve in parliament for this borough, at Lady-Day, 1710, and not claiming by purchase, for a valuable consideration, or by will or descent, since

jected to as split, and 24 of the latter's as split, or fraudulently conveyed; and, if the objection was good, and the votes struck off on both sides, the sitting member had a majority.

that

that time, had a right to vote at the last election. And that, it appearing to the committee, that divers scandalous and illegal practices had been lately carried on in this borough, to multiply votes, in order to the last election of members to serve in parliament, it was their opinion, that all such persons whose votes were not admitted at the determination of the last controverted election in parliament for the said borough, and who had not acquired a right by descent or devise since that time, had a right of voting in the last election. But, at a subsequent time, the committee resolved, that no freeholders of this borough, made since the election of members to serve in parliament, in April, 1711, unless claiming by devise, or descent, had any right of voting at the last election of members.—And afterwards the committee further resolved, that all conveyances, to split and divide the interest in any houses or lands in this borough among several persons, in order to multiply votes at the election of members to serve in parliament for the said borough, were illegal and void. The report founded on these resolutions, was adopted by the House, and the return amended accordingly.

Splitting of
Freeholds.



The legislature finding that, notwithstanding the statute of the 7 & 8 W. III. the evil still increased,

Fraudulent
Conveyances.

Fraudulent
Conveyances.

increased, and that many fraudulent and scandalous practices were still used, for the purpose of creating and multiplying votes at elections of knights of the shire, enacted, by the 10 Anne, c. 23. s. 1. “ that all estates and conveyances
“ whatsoever, made to any person or persons,
“ in any fraudulent or collusive manner, on
“ purpose to qualify him or them to give his or
“ their vote or votes at such elections of knights
“ of the shire, (subject, nevertheless, to conditions
“ or agreements to defeat or determine such
“ estate, or to reconvey the same) shall be deemed
“ and taken, against those persons who executed
“ the same, as free and absolute, and be holden
“ and enjoyed by all and every such person or
“ persons, to whom such conveyances shall be
“ made as aforesaid, freely and absolutely acquitted, exonerated, and discharged of and
“ from all manner of trusts, conditions, clauses
“ of re-entry, powers of revocation, provisos
“ of redemption, or other defeasances whatsoever, between or with the said parties, or any
“ other person or persons in trust for them; and
“ that all bonds, covenants, collateral or other
“ securities, contracts, or agreements, between
“ or with the said parties, or any other person
“ or persons in trust for them, or any of them,
“ for the redeeming, revoking, or defeating such
“ estate or estates, or for the restoring or recon-
“ veying

“veying thereof, or any part thereof, to any
“person or persons who made or executed such
“conveyance, or to any other person or persons
“in trust for them, or any of them, shall be null
“and void to all intents and purposes whatsoever; and that every person, who shall make
“and execute such conveyance or conveyances
“as aforesaid, or, being privy to such purpose,
“shall devise or prepare the same; and every
“person who, by colour thereof, shall give any
“vote at any election of any knight or knights
“of a shire to serve in parliament, shall, for
“every such conveyance so made, or vote so
“created or given, forfeit the sum of forty
“pounds, to any person who shall sue for the
“same, to be recovered, together with full costs
“of suit, by action of debt, bill, plaint, or information, in any of her majesty’s courts of
“record at Westminster, wherein no essoin,
“privilege, protection, wager of law, or more
“than one imparlance, shall be admitted or allowed.” By the 18 Geo. II. c. 18. s. 5. no
person “shall vote in respect or right of any
“freehold estate, which was made or granted to
“him fraudulently, on purpose to qualify him
“to give his vote.”

These provisions are only declaratory of the common law, by which, wherever a person made a fraudulent grant of land to create a vote,
the

Fraudulent
Conveyances.

Fraudulent
Conveyances.

1 Dougl.
p. 223.

the grantee might either take possession of the land, or recover the profits from the grantor.— The validity of such grants at common law was established in the case of and assignees of Metivier, a bankrupt, against Devisme, where the defendant, having made a transfer of India stock to the bankrupt, merely for the purpose of qualifying him to vote, it was holden that the assignees were entitled to the stock.

Occasional
freeholders.

10 Journ.
p. 362.

The making of occasional freeholders at the eve of a general election had long been a common practice; and, so far back as in the case of the county of Suffolk, 1st April, 1690, the petition against the election complained of indirect practices, in making several hundred freeholders after the teste of the writ. Except with respect to voters in burgage tenure boroughs, every species of voters, (freeholders as well as others,) plainly occasional, and made fraudulently for the purpose of voting, were disqualified at the common law; but no particular limitation of time before an election was fixed; nor were the decisions of the House of Commons, on this head, always reconcileable to justice.—Peterfield, 9th May, 1727. The committee resolved, (and the House agreed,) that the right of election was in the freeholders of lands, or ancient dwelling-

20 Journ.
p. 860.

dwelling-houses, or shambles or dwelling-houses, or shambles built upon ancient foundations, within the said borough. Many votes were objected to, as split and occasional votes, particularly sixty-five of those who polled for the petitioner, made only in January, the election having taken place on the 27th of that month. The election depended upon the question, Whether the split votes were good, or not? The committee resolved the sitting member to be duly elected, thereby determining the votes, made just before the election, to be bad ones; but the House disagreed, and resolved, that the petitioner was duly elected.

Occasional
freeholders.

By section 3. of the 10 Ann. c. 23. an addition was made to the freeholders oath (which is continued to the present day by the 18 Geo. II. c. 18. f. 1.) and every person voting is (if required) to swear, that his freehold estate, for which he votes, was not made or granted fraudulently, on purpose to qualify him to give his vote.

In order still more effectually to check the mischievous practice of making fraudulent votes, the 18 Geo. II. c. 18. f. 5. provides, that “ no
“ person shall vote in any such election, without
“ having a freehold estate in the county for which
“ he votes, of the clear value of 40s. over and
“ above

In possession
12 months.

In possession
12 months.

“ above all rents and charges payable out of or
 “ in respect of the same, or without having been
 “ in the actual possession, or in receipt of the
 “ rents and profits thereof, for his own use, above
 “ twelve calendar months, unless the same came
 “ to him, within the time aforesaid, by descent,
 “ marriage, marriage-settlement, devise, or pro-
 “ motion to any benefice in a church, or by pro-
 “ motion to an office ; or shall vote in respect or
 “ in right of any freehold estate, which was made
 “ or granted to him fraudulently, on purpose to
 “ qualify him to give his vote ; or shall vote
 “ more than once at the same election ; and if
 “ any person shall vote in any such election, con-
 “ trary to the true intent and meaning hereof,
 “ he shall forfeit to any candidate for whom such
 “ vote shall not have been given, and who shall
 “ first sue for the same, the sum of 40 *l.* to be
 “ recovered by him or them, his or their execu-
 “ tors or administrators, together with full costs
 “ of suit, by action of debt, in any of his majesty’s
 “ courts of record at Westminster, wherein no
 “ essoin, protection, wager of law, privilege, or
 “ imparlance, shall be admitted or allowed ; and
 “ in every such action the proof shall lie on such
 “ person against whom the same was brought,
 “ unless the fact on which such action is grounded
 “ be the having polled more than once at the
 “ same election.” The following resolution was

probably made with an intention to apply this statute to borough elections.

In possession
12 months.

Wareham, 19 January 1747.—Resolved by the committee, and agreed to by the House, that the right of election is only in the mayor and magistrates, and such of the inhabitants as pay scot and lot, and in the freeholders of lands and tenements there, who have been, *bona fide* to their own use, in actual possession, or in the receipt of the rents and profits of such lands and tenements, for the space of one whole year next before the election, except the same came to such freeholders by descent, devise, marriage, marriage settlement, or promotion to some benefice in the church.

25 Journ.
p. 481.

By the freeholders oath, as altered by 18 Geo. II. c. 18. the voter swears, that he has been in the actual possession, or receipt of the rents and profits of his estate, *above twelve calendar months*, unless it came to him in some of the ways enumerated above. The act does not specify the time whence the twelve months are to be computed, whether from the day appointed for the election, or the day on which the voter gives his vote. But the natural construction seems to be, that it shall be reckoned from the day when he takes the oath, and actually gives his vote.

3 Dougl.
p. 235.

The

Except by
devise, &c.

The exception of lands coming by devise or descent, has been carried to a very extravagant length; for in almost every contested county election it happens, that before the poll is closed, some of those who have voted die, and the son has been always allowed to vote, at the same election, for the lands for which the father had voted before, although it came to him by devise, descent, or marriage, even after the poll begun. So it was as to lands coming by devise and descent in the Monmouthshire, Gloucestershire, Bedfordshire, &c. elections. So where a man married after the Bedfordshire election was begun, and before he voted, it was held that he might vote for a freehold he held in right of his wife.

¹ Dougl.
p. 272.

² Luders,
p. 427.

Assessment.

The 10 Ann. c. 23 & 12 Ann. ft. 1. c. 5. had required the freehold of a voter to be rated, merely with a view to ascertain the value; but by the 18 Geo. II. c. 18. those acts were repealed, and a new system of rating introduced, without any reference whatever to the value of the premises. Its object might be to check the creation of occasional voters, and to ascertain the persons who had a right to give their suffrages at elections. The second section of the last-mentioned act expressly extended its provisions to Wales as well as England; and by the third section, no person shall

shall vote for the electing of a knight or knights of the shire to serve in parliament, within that part of Great Britain called England, or the principality of Wales, “ in respect or in right of
“ any messuages, lands, or tenements, which
“ have not been charged or assessed towards
“ some aid granted, or hereafter to be granted
“ to his majesty, his heirs, or successors, by a
“ land-tax in Great Britain, twelve calendar
“ months next before such election.” And by section 4. it is provided, that that act shall not restrain any person from voting at the election of any knight of the shire, in respect or in right of any rents, or any chambers in the inns of court, or inns of chancery, or any messuages or seats belonging to any offices, in regard or by reason that the same have not been usually charged or assessed to the aid commonly called *the land-tax*.

But numberless questions having arisen upon this act at county elections, *and great* delays and inconveniences having been occasioned by perpetual disputes concerning the rights of persons who claimed to vote as being *virtually rated*, where their names did not appear upon the rate, but the lands were rated not at all, or in other names, the 20 Geo. III. c. 17. was passed. By that act an attempt was made to put an end to all questions upon the virtual rating of estates, and

Assessment.

All voters at county elections to be assessed to the land-tax, six calendar months before such election.

it enacts that "no person shall vote for electing of any knight or knights of the shire to serve in parliament, within that part of Great Britain called England, or the principality of Wales, in respect of any messuages, lands, or tenements, which have not, for six calendar months next before such election, been charged or assessed towards some aid granted or to be granted to his majesty, his heirs or successors, by a land-tax (in case any such aid be then granted and assessable) in the name of the person or persons who shall claim to vote at such election, for or in respect of any such messuages, lands, or tenements, or in the name of his or their tenant or tenants actually occupying the same, as tenant or tenants of the owner or landlord thereof."

Certain cases to which this act shall not extend.

The second section provides, "that this act, with respect to such rating and assessing as aforesaid, shall not extend, or be construed to extend, to annuities or fee-farm rents (duly registered) issuing out of any messuages, lands, or tenements, rated or assessed as aforesaid, nor shall the same extend, or be construed to extend, to any person who became entitled to such messuages, lands, or tenements, for which he shall vote, or claim to vote, as aforesaid, by descent, marriage, marriage settlement, devise, or promotion to any benefice in a church, or by promotion to an office, within twelve calendar months next before
such

such election; but such person shall be entitled to vote at such election, if the messuages, lands, or tenements, for which he shall vote, or claim to vote, as aforesaid, have been, within two years next before such election, rated or assessed to the land-tax, in the name of the person or persons by or through whom such person voting, or claiming to vote, as aforesaid, shall derive his title to the messuages, lands, or tenements, for which he shall vote, or claim to vote, as aforesaid, or in the name of some predecessor, within two years next before such election, of such person claiming to vote in respect of any promotion to any benefice in a church, or promotion to an office, or in the name of the tenant or tenants of such person or persons, such tenant or tenants actually occupying such messuages, lands, or tenements."

Assessment.

Provided his qualification has been assessed to the land-tax, in the name of his predecessor, within two years before the election.

The third section enacts, "That the commissioners of the land-tax for that part of Great Britain called England, or the principality of Wales, at their respective meetings held for appointing assessors of the land-tax for the several parishes and places lying within the division for which such commissioners shall act, shall cause to be delivered to each of the said assessors, a printed form of an assessment, as set forth in the schedule hereunto annexed, and the said assessors are hereby required to make their assessments

Commissioners to deliver to assessors a printed form of assessment, who are to make their assessments according to that form, and to make three duplicates.

Assessment.

A duplicate
to be stuck
up on the
door of the
parish
church, &c.

Person rent-
ing, &c. mes-
suages, &c.
belonging to
different per-
sons, shall be
separately
rated.

Owners of
estates omit-
ted in the as-

according to the said form, and shall make three duplicates of such assessments, and shall (at least fourteen days before such assessment shall be delivered to the commissioners of the land-tax for the county, riding, or division, within which the parish or place for which such assessment shall be made shall lie) cause one of the said duplicates, or a fair copy thereof, to be stuck up upon one of the doors of the church or chapel of the parish or place for which such assessment shall be made; but in case such assessment shall be made for an extra-parochial, or any other place, where there is not any church or chapel, then such assessment shall be stuck up upon one of the doors of the church or chapel in a parish next adjoining; and if any person or persons (renting, holding, or occupying, any messuages, lands, or tenements, in any such parish or place) shall rent, hold, or occupy, messuages, lands, or tenements, belonging to different owners or proprietors, the same shall be separately and distinctly rated and assessed in such assessments, that the proportion of the land-tax to be paid by each separate owner or proprietor respectively may be known and ascertained; and the said duplicates shall be delivered to the land-tax commissioners, at their meeting for the receipt of assessments; and if the name of any owner or owners of any messuages, lands, or tenements, in such

such parish or place, entitled to vote as aforesaid, shall not appear or be included in such assessment, it shall and may be lawful for such person or persons, by himself or themselves, or by his or their agent or agents, to appeal to the commissioners of the land tax, to whom such assessments shall be returned; and every person so intending to appeal shall, and is hereby required to give notice thereof, in writing, to one or more of the assessors of the parish or place wherein he is rated; and the said commissioners, on sufficient cause to be shewn, shall amend the duplicates of such assessments, by inserting therein the name or names of the actual occupier or occupiers, and of the owner or owners of such messuages, lands, or tenements, or the person or persons entitled to, or in actual receipt of the rents, issues, and profits thereof, or by erasing the name of any person who shall appear to them to have been improperly inserted therein; and the said commissioners are hereby required to cause one of the said duplicates so amended (after the same shall be duly signed and sealed by the said commissioners, or any three of them) to be returned to the said assessors, or one of them; and such assessors are hereby required to deliver such duplicates so amended, within ten days after the receipt thereof, to one of the chief constables of the hundred, lath, or wapentake, with-

Assessment.

assessments,
may appeal
to the com-
missioners;

who may
amend.

An amended
duplicate to
be returned
to the asses-
sors, and de-
livered to the
chief constable, and by
him to the
clerk of the
peace at the
next quarter
sessions.

Assessment.

in which the parish or place for which such assessment was made shall lie, taking the receipt of such chief constable for the same, and which receipt such chief constable is hereby required to give ; and such chief constable is hereby also required to deliver such duplicate, upon oath (which oath the said magistrates are hereby empowered to administer) without any alteration, at the next general quarter sessions of the peace for the county, riding, or division, within which such assessment shall be made, in open court, the first day of such sessions, to the clerk of the peace attending such sessions, to be by him filed and kept amongst the records of the sessions."

The 4th, 5th, 6th, 7th, and 8th sections lay penalties for misconduct in the assessors or chief constables, in not delivering the duplicates regularly to the clerk of the peace, and direct on whom and how the fines are to be levied. The 9th section provides, that whenever any assessments shall not have been made, and returned to the clerk of the peace, by the neglect of any person concerned therein, the justices in sessions, or any two justices, may order such assessments to be returned forthwith. By the 10th section, any person thinking himself aggrieved, may appeal to the next quarter sessions, giving ten days notice, and the justices may award costs to be evied by distress. By the 11th section, if the commissioners,

commissioners, or justices, upon appeal, insert any names in the assessments, or duplicates, improperly omitted, they shall be deemed to have been rated as if they had been originally inserted. The 12th section gives the husbands of women intitled to dower unassigned, the right of voting.

Assessment.

13thly. And "that it shall and may be lawful for all and every person or persons, at all seasonable times, to resort to and inspect the said duplicates, or any part thereof, in the hands of such clerk of the peace, or his deputy, paying for every search into, or inspection of such duplicates, or any part thereof, one shilling, and no more; and the said clerk of the peace, or his deputy, is hereby required and directed, upon demand, to deliver a true copy or copies of all such duplicates, or of such part or parts of them, or any of them, of which a copy shall be demanded, to any person or persons who shall demand or desire the same (such copy or copies to be signed by such clerk of the peace, or his deputy, purporting the same to be a true copy or true copies) and for which copy or copies such clerk of the peace, or his deputy, shall be paid at and after the rate of six-pence, and no more, for every three hundred words or figures, and so in proportion for any lesser number of words or figures; which said duplicates, and also a true

Duplicates may be inspected.

Clerk of the peace to deliver signed copies of duplicates, on demand.

Duplicates, or copies of

Assessment.
 them, to be
 admitted as
 legal evi-
 dence of such
 assessments,
 &c. in all
 cases.

copy of them, or any of them, or any part of them, signed as aforesaid, and also the duplicate of any assessment in the possession of the commissioners of the land-tax, or in the possession of the receiver-general of the county, or a copy of the said duplicates, signed by such commissioners, and purporting the same to be a true copy, shall at all times, and in all places, be allowed and admitted as legal evidence of such assessments, certificates, memorials, and books of entries, in all cases whatsoever; and such copy shall be delivered in a reasonable time after the same shall be demanded."

Clerk of the
 peace, or his
 deputy, to
 attend at
 every election
 of a knight
 of the shire,
 with original
 duplicates.

14thly. And "that such clerk of the peace of every county, riding, or division, in whose office such duplicate shall be filed as aforesaid, or his deputy, shall, upon reasonable notice, attend at every election of a knight or knights of the shire for such county, with the said original duplicates, at the request of any candidate, or the agent or agents of any candidates, the person or persons requesting the same making such clerk of the peace, or his deputy, a satisfaction for such attendance at and after the rate of two guineas for each day of his attendance at such election, together with an allowance of one shilling and sixpence a mile, for the costs and charges he may be at, or put unto, in his journey from the place of his abode to and from the place of such election.

15thly.

15thly. And “that after issuing any writ or precept for the election of a knight or knights of the shire for any county, within that part of Great Britain called England, or the dominion of Wales, the clerk of the peace, or his deputy, shall, and he is hereby required to attend, gratis, from day to day, from the hour of nine in the forenoon to three in the afternoon in each day, at the place where the records of such county, riding, or division, are usually kept, from the time of the delivery of such notice, to the day immediately preceding the day of election of such knight or knights, for the purpose of receiving applications for the inspection of such duplicates, and for making copies of them, or any of them, or so much of them, or any of them, which he shall be requested to copy as aforesaid.”

Assessment.

After issuing any writ for the election, the clerk of the peace shall attend gratis, to make copies of duplicates, &c.

Section 16, imposes a penalty of 500*l.* forfeited to the party aggrieved, with forfeiture of office, on any clerk of the peace, or his deputy, offending against this act; the action to be brought within two months. By the 17th, final judgment on any verdict against such clerk or deputy clerk of the peace shall be a sufficient conviction. The 18th points out the mode of recovering, &c. the penalties against the clerk or deputy clerk of the peace; and, by the 19th,

Penalty.

no

Affessment.

no person is to be liable to any prosecution under this act, unless it is commenced within twelve months.

FORM of ASSESSMENT.

“ County of N—, to wit, } “ An Assessment, made
for the parish of } in pursuance of an act of
in the said county. } parliament, passed in the
year of his Majesty’s reign, for granting
an aid to his Majesty by a land-tax, to be
raised in Great Britain, for the service of the
year one thousand seven hundred and

Names of Proprietors.				Names of Occupiers.		Sums assessed.	
A. B.	—	—	—	Himself	—	—	—
A. B.	—	—	—	C. D.	—	—	—
E. F.	—	—	—	C. D.	—	—	—
C. D.	—	—	—	G. H.	—	—	—
J. K.	}	—	—	N. O.	—	—	—
and							
L. M.							
P. Q.	—	—	—	{ R. S. and T. U. }	—	—	—

Signed this day of 17 by us,

A. B. } Assessors.”
C. D. }

I have

I have given the material clauses of this statute at length, because it must be continually necessary to refer to, and to argue from them, at all county elections; for the objections founded upon this act of parliament, intended "to remove certain difficulties relative to voters," make a principal part of this branch of the law. Out of about 2000 votes upon the poll at the last election for Bedfordshire, the committee decided upon 577, and the want of a regular assessment to the land-tax was the objection to no less than 277, or nearly *one half* of that number. In the cases of Essex, Yorkshire, and Oxfordshire (which are mentioned as instances of elections more warmly contested than any other) the objections to votes, on account of their not being regularly assessed, bore no proportion to that number; and yet the act of the 20 Geo. III. had been expressly made to prevent all disputes about *virtual* rating, by giving one general rule to proceed by, viz. that the estate for which any person claims to vote, should be rated in his name, or in the name of his tenant or tenants occupying the same. If this provision had been strictly enforced by the Bedfordshire committee, it would have saved much expence, time, and trouble; by departing from it, they fell into the very evil the statute was meant to prevent, and more than 200 questions of *virtual*
rating

Assessment.

Assessment.

rating were actually decided. The inconveniences and difficulties, which have arisen from the attempt to subject the estates of voters to an assessment, is a strong instance of the danger of departing from the plain and simple rules of the common law. The legislature has, for more than seventy years, had this object in view; statute upon statute has been made, and yet the necessity of some further alteration is admitted by all. The present act operates as a law of disfranchisement upon most of the independent freeholders, while party men are not likely to forget that their tenants and retainers must be duly assessed. I have been informed from good authority, that at the last general election there were not more than 400 freeholders in the county of Lancaster who were properly assessed, and could have voted, if there had been a contest. The late attempt, by the 28 Geo. III. c. 36. to correct, would have only aggravated the evil. That statute, though objectionable in many particulars, might possibly have been carried into execution in the smaller counties, but in the *larger* ones it could not have been executed. In Cheshire the poll at an election must have been taken by no fewer than 700 persons at the same time, and in Lancashire by nearly 400! That act, however, has been repealed, and peace be to its *manes*. The present state of the law is a great grievance, and
some

some remedy must be applied; perhaps the shortest, as well as the most efficacious one, would be to repeal the 20 Geo. III. and give up the present system entirely. By this means, it is probable that fewer questions would arise on county elections; for the bulk of those which have been made under the statutes have been as to the form of the assessment, and have punished with disfranchisement, not the fraud, but the carelessness of voters. The experiment may be worth trying, for the difficulty of finding an expedient to enforce the rating of freeholds has been sufficiently felt.

Assessment.

Before we state the several cases that have been determined upon this act, it may be proper to make some observations upon the rate, and manner of making it. In the case of Milborne Port, 1774, the committee resolved, that persons rateable, and having paid to the rate, though that rate be made by officers illegal or doubtful, have a right to vote, as inhabitants paying scot and lot.

Assessment
by officer de
facto.

This resolution, as Mr. Douglas observes, is consonant to the determinations of courts of law in settlement cases. "And, though the rate be
" in form, or in the manner of making it, not
" strictly legal, but void, yet, if the party be
" rated, and pay to such a rate, he shall gain a
" settlement; but a man must be rated, and

1 Dougl.
P. 129.

Ib. p. 141.

Burn's Jus-
tice, 3 vol.
p. 384. 381.

Assessment.

" must pay, to gain a settlement." In like manner, if a person, having a freehold estate, which in other respects would qualify to vote at the election of knights of the shire, is rated to the land-tax by a person *de facto* the proper officer to make the assessment, he will not be disqualified from voting, though it should turn out that such officer's authority to make the assessment was illegal or doubtful.

Form of.

The form of the schedule given in the act of parliament shews, that it is necessary to insert in the rate the sum assessed upon each freeholder; and by sect. 3. the assessors are expressly directed to pursue the form given in the schedule. Notwithstanding this, the Bedfordshire committee, finding it necessary, at the opening of the business, to come to some general rules for regulation of their future conduct, resolved, " that it is " not necessary that the form of the schedule " should be strictly complied with." And in the course of the proceedings the following question occurred :

2 Luders,
P. 527.

William Geary, Esq. had voted ; but, in the duplicate left with the clerk of the peace, there was no sum affixed to his name, and it was objected that he was not duly assessed. It was said, that the act required *assessment* only, and not *assessment in particular sums*. But the assessor produced

produced the original rate, in which a particular sum was assessed on the voter, and the omission appearing to be a mere mistake in copying it, his vote was allowed.

Assessment.

The form of the assessment is necessarily intrusted to the assessors; and it would be extremely hard, that the franchises of the electors should depend intirely upon the manner in which they made them out. The ignorance or carelessness of assessors, in many cases, and worse motives in some others, have perverted a law, framed for the security of electors, into a trap for their disfranchisement. The Bedfordshire committee, in order to counteract this mischief as far as possible, adopted this general rule, That no voter should be disfranchised, through the mistake of the assessor, in putting down in the rate a wrong christian or surname; and permitted the assessors to be examined, to prove that the person intended to be rated was the voter. Thus Henry Wagstaffe described his freehold as occupied by William Day. The assessment was *William Wagstaffe—William Watts*, tenant. Watts had been the tenant two years before; but at the time of making the assessment, and at the election, Day was tenant. The name of *William Wagstaffe* appeared to be a mistake of the assessor, and therefore the committee held the vote to be good; for, if that mistake was rectified,

Assessment explained.

2 Luders,
P. 519.

the

Assessment
explained.

2 Luders,
P. 517.

the wrong description of the tenant was no ground to reject the assessment.

John Hughes had voted for a freehold, assessed in the name of *William* Hughes, with a different tenant from that on the poll. It was proved, that there was no other person of the name of Hughes, in that place, but the voter, and his vote was held good. Whereupon it was proposed, and should seem adopted as a general rule, that, if there was any person in the parish of the names found in the rate, it should be presumed that he was the person rated, unless the voter proved that they were intended for him; but that where no person answering the description lived in the parish, it should be deemed a clerical mistake in the name of the right person. And that, where the father's name remained in the assessment for more than two years, it was not an assessment of the freehold of the son, unless the assessor, conceiving it to be the name of the son, had, by mistake, inserted it for his; and the assessors were called as witnesses to explain the rates.

Ib. p. 538.

A determination in the Cricklade committee was contradictory to this rule; for one *James Munday* had voted, where the name of *William* Munday, as owner, appeared in the assessment, and the committee would not allow evidence to shew that no such person lived in the parish, and therefore that the voter must have been the person intended.

S. Safford,

John Lilley voted for a tenement in possession of Thomas Burton. His brother Joseph had a freehold occupied by William Laughton. Both these tenements were managed by John Lilley, father of the voter and Joseph. The assessor, taking the father for the owner of both, entered him as such in the rate, and inserted the name of William Laughton as tenant of both, because he thought him a more responsible man than Burton. The vote was held bad.

Assessment explained.

2 Luders, p. 522.

All the duplicates of the assessment are equally authentic; and therefore, though the name of a voter, (James Crouch) did not appear in the copy of the rate given to the clerk of the peace, yet, because it was found in one of the duplicates in the hands of the commissioners of the land-tax, his vote was allowed.

Ib. p. 527.

Upon suggestion that there was a clerical mistake in the duplicate left with the clerk of the peace, the Bedfordshire committee, as before stated, allowed the assessor to produce the original rate to prove the mistake.

Pa. 126.

The assessment act may be considered either as it concerns the *estate* or the *person*. With respect to the estate, two points are material. 1. What estate must be rated. 2. In what parish or district.

Assessment of what estate.

K

1. With

Assessment,
of what
estate.

2 Luders,
p. 499.

Ib. p. 526.

1. With respect to the *estate* to be rated. It should seem that every species of property, for which a person claims a right to vote, must be rated, unless it came to him within twelve months next before the election, in some of the ways mentioned in the second section of the act, or unless, as the same section provides, his qualification is an annuity, or fee farm rent (duly registered) issuing out of real property. Hence, in the Bedfordshire case, it was argued, that every annuity, not required to be registered, must be assessed to the land-tax, and the committee seem to have adopted the argument.

In the Bedfordshire case, an exception was attempted in favour of the minister of a particular parish, in the case of the Rev. Henry Hinde, who voted for house and land in his own occupation; viz. the parsonage house. For this he was not rated, but he had three other tenements in the parish let to other tenants. It was objected, that the freehold for which he had voted was not assessed, and that he could not rely upon any but that he gave in on the poll. To this it was answered, that it was enough that the voter had a freehold *in the parish* named at the poll, though he had not named the right estate; but if not, it had been proved to be the custom in this particular parish not to assess the clergyman for the house

house he lived in, and therefore this case was distinguished from all others. The committee substantiated the vote.

Assessment
of what
estate.

This attempt to exempt the parsonage-house probably arose from certain cases of scot and lot boroughs, where the parishioners had indulged their minister in a similar exemption from the poor rates; but there is this manifest distinction between the two cases, in the one the parishioners were the only persons concerned, they might return the money he had paid to the rate, or excuse him entirely, and the foundation of his exemption being their own free will, they might by custom admit him to all the privileges they enjoyed; but the other is a condition imposed by statute, upon which alone the voter can have a right to exercise his franchise.

2. The next question is, in what parish or district a freeholder's estate must be assessed. It appears from the act, that it must be inserted in the assessment made by the assessors for the parish or place where the land lies. The following cases occurred before the Cricklade committee (1785) John Bailey, and two others, voted for freeholds in Malmsbury. They were situated not in the parish but in the town of Malmsbury, and in the parish of Westport, where they were assessed. The committee came to no resolution

In what
parish or
place.

2 Luders,
p. 512.

Assessment,
in what parish
or place.

2 Luders,
p. 512.

about them, but the counsel considered them as untenable.

William Clements voted for a freehold in Broad Town. This is a tything of the parish of Cliff Pepard, and there are three others, each separately assessed. The voter was assessed in the tything of Cliff, but not in that of Broad Town, where the freehold lay, and the vote was held bad.

Ib. p. 511.

William Hufsey, Esquire, voted for a freehold in Highworth. This parish is divided into tythings, each separately rated to the land-tax; one of these tythings is also called Highworth. The committee resolved, "that the voter's being
" rated on the assessment of some or one of the
" tythings, part of the mother parish of High-
" worth was sufficient."

Ib. p. 512.

H. Mereweather voted for a freehold in Leigh. The parish is Leigh and Claverton, and the assessment for each is separate. The voter's estate lay in the latter, yet held good.

Ib. p. 497.

With respect to the person to be rated, one of the general rules for the construction of the assessment act, laid down by the Bedfordshire committee, was, "That the owner's name must ap-
" pear on the assessment, either as the person
" assessed, or as owner of the land for which
" the tenant is assessed. The Cricklade com-
mittee

mittee came to a contrary resolution; viz. Assessment,
how.
 “ That such freeholders as were assessed for the
 “ premises in respect of which they claimed to 2 Luders,
P. 536.
 “ vote, either in their own names, or in the
 “ names of their tenants actually occupying
 “ the same as tenants of such freeholders, were
 “ entitled to vote at the late election for the
 “ borough of Cricklade.” The construction of
 the Bedfordshire committee seems most conso-
 nant to the words of the act; but the Bucking-
 hamshire committee adopted that of Cricklade; Ib. p. 539.
 and resolved, “ that it is not necessary that the
 “ name of the owner should appear upon the
 “ rate.” This was the only resolution of the
 Buckinghamshire committee on this act of par-
 liament; but the two other committees, in conse-
 quence of the opposition of their general princi-
 ple, decided several cases which it is impossible to
 reconcile.

J. Tansley's freehold consisted of land *and* Ib. p. 525.
houses. It was the custom of the parish to assess
land only, and his land was neither worth nor
 assessed at 40 s. a year, but with his houses it
 was of more than that value. His vote was held
 good.

The Reverend Richard Dowbiggen voted for Ib. p. 507.
 glebe and tythe, in the occupation of Lord
 Leigh. The assessment was *Lord Leigh, for*
tythe occupied by John Mann. Lord Leigh had

Assessment
how.

a lease for lives of the prebend of *Leighton Buzzard*, of which the voter was prebendary, at 76 l. *per annum*. Mann rented the tythe of Lord Leigh, and the vote held good.

2 Luders,
P. 523.

John Vernon, junior, Esquire, voted for a freehold in the occupation of James Harris. The assessment was in this form.

Landlord.	Tenant.
Mr. Vernon.	Daniel Cleaton.
Ditto.	Isaac Pennyfather.
Ditto.	James Harris.

John Vernon the father had voted for the estate occupied by Daniel Cleaton, and it was contended that the words *ditto* referred to the father; but, it being proved Harris was tenant to the son, his vote was admitted.

Ib. p. 530.

The voter is the person whose name must be inserted under the title of *owner*, in the assessment. Thus James Brazier had a freehold in right of his wife, whom he had married more than three years before the election. It was assessed in the name of *Mrs. Brazier*, and therefore his vote was rejected.

Ib. p. 520.

William Paine, the owner of a freehold, was rejected, because the assessment was of *Jane Sloper* owner, and William Paine tenant, he being so at the time of the assessment made.

Where

Where land was devised to Thomas Smith, in trust for payment of legacies to the younger children, and Thomas refused to hold the land subject to the trust, and allowed each of the younger children to possess separate parcels of the premises devised in satisfaction of their legacies, the vote of one of them, named Hugh, was rejected, because the elder brother Thomas's name was inserted in the rate. It was argued that Thomas was trustee of the legal estate for Hugh, who had possession of an equitable estate.

Assessment,
how.
2 Luders,
p. 508.
Trustee
rated.

In some cases it might be difficult to know whom to assess as owner of the estate, and in such cases the following decisions of the Bedfordshire committee have gone upon the idea, that it will suffice to make use of some general description of the owners, or of the subject matter itself.

The Reverend Edmund Whadley voted as vicar of Houghton, for tythes occupied by T. Brandreth, Esquire. The assessment was of "T. Brandreth, Esquire, for house, land, and tythes in his own occupation." The vicarage had been endowed with the tythes of certain lands, but the present impropiator of the great tythes, in consequence of an agreement made a century ago, had for more than thirty years paid

Ib. p. 506.

Assessment
how.

to the voter and his predecessors, a sum of money exceeding 40 s. in lieu thereof. It was contended in favour of this vote, that the resolutions of the committee, as to the rating of the owner, were applicable only to the common connection of landlord and tenant, but not to the case of the vicar and Mr. Brandreth; and that in such cases the assessment of the *subject of the vote*, without reference to the owner, was all that could be reasonably expected; and the committee allowed the vote.

2 Luders,
P. 520, 521.

But it was held that a freeholder could not vote for an estate assessed by the description of "Billington's land;" or of "the heirs of Thomas Foskey;" or of "Dunstable charity;" or of "Meakham's children;" or of "late Franklin's;" but Francis White was held to be a good vote, where the entry was "late White's, in dispute," on account of the words *in dispute*, which shewed the right to have been uncertain, and, until it was ascertained who was the owner, nobody could appeal. If the dispute had been settled in time to have appealed, the objection might have held.

The Bedfordshire committee allowed the votes of several persons, who were not assessed at all, or not regularly, as owners of the estates for which they voted; because, though they were entitled to a beneficial interest in the estate, it was impossible

for them to get their names inserted in the rate by any means allowed by law. This was the case with regard to schoolmasters, who received the profits of their lands not immediately, as rent, but through the medium of trustees, as salary.

Assessment,
how.
2 Luders,
p. 502.

Thus, two schoolmasters voted each for land and tythe, where the estate was assessed under the name of "charity land." *Ib.* p. 501.

So an assessment in these terms, "Bolnhurst School Farm, Joseph Lilly," (tenant) and another of "Kimbolton School Farm, J. Parfler," (tenant) were held good. *Ib.* p. 502.

At the Cricklade election, William Kempe voted for a freehold belonging to him, as schoolmaster of Lineham. The assessment was of "the schoolmaster of Lineham;" and his vote allowed. *Ib.* p. 539.

William Gale was schoolmaster of a freehold at Thurleigh; he received 40*s.* a year, for which he voted, out of lands in Goldington, charged with the payment of it, "for the benefit of the school at Thurleigh." The lands belonged to Mrs. Edwards, but were occupied by Mrs. Smith as her tenant. The form of assessment was "Mr. Edwards" (landlord) "Mrs. Smith" (tenant). Mr. Edwards managing the estate for his mother, his name was entered in the assessment by mistake for hers. Gale voted "for his salary"

Assessment,
how.

“ salary out of meadow land in Goldington, with
“ the name of the tenant,” but the poll clerk
had taken down his vote for “ land in Golding-
“ ton,” in the occupation of Mrs. Smith. The
vote was supported as if it had been given *for*
his salary, and then it was not required to be re-
gistered by 3 Geo. III. ch. 24. which does not
extend to annuities annexed to offices; it was
compared to the case of a salary in lieu of tythes,
determined not to be within the act by the
Gloucestershire committee; and argued that this
case necessarily forms an exception, for Gale could
not compel the assessors to insert his name in the
rate. The committee held the vote to be *good*.

2 Luders,
p. 514.

George James Gorham. In this case it was
resolved, “ that the omission or misstatement
“ of the tenant’s name in the assessment, should
“ not be deemed a valid objection to the *own-*
“ *er’s* vote.” The committee seem to have been
governed by this consideration, that a wrong
assessment of the tenant could not be corrected
by the owner’s appeal, if he himself was rated.

Ib. p. 507.

Reverend W. P. Nethersole voted for the
vicarage of Ledlington. He received 10*l.* a
year in right of his vicarage, from the impro-
priator, Lord Offory, and was not assessed, but
Lord Offory was. The vote was held good,
though the vicar not assessed, because it was im-
possible

possible for him to get *his name* inserted by any means allowed by law.

Assessment
how.

It was determined, both in the Bedfordshire Jointenants. and Cricklade cases, that if one jointenant only is named in the rate, his vote shall be received; but that he who is not rated, shall have no vote. Thus James and Henry Wittenstall were ² Luders, jointenants, Henry alone was assessed, and James's p. 508. vote was held bad. In the Cricklade case, Robert Hapgood, and his brother James, had two houses adjoining, let as one tenement to William Hill. The rate was of James Hapgood, as owner, and W. Hill, as tenant; and the vote of Robert was rejected. Ib. p. 538.

Samuel and Daniel Charlton were cousins, Ib. p. 508. and held an estate in equal shares. Daniel, who was the elder, had voted without objection for the petitioner; when Samuel came to vote for the sitting member, he was objected to as not assessed. The rate was of *Mr. Charlton* generally, and therefore, it was contended, must mean the elder; besides, the sitting member, by not objecting, had indirectly admitted that he was the person assessed; and Samuel was rejected.

By the third section of the act, "if any person or persons (renting, holding, or occupying
" any Joint or separate sums.

Affessment,
joint or sepa-
rate sums.

“ any messuages, lands, or tenements, in any such
“ parish or place) shall rent, hold, or occupy,
“ messuages, lands, or tenements, belonging to
“ different owners or proprietors, the same shall
“ be distinctly rated and assessed in such assess-
“ ments, that the proportion of the land-tax to
“ be paid by each separate owner or proprietor
“ respectively may be known and ascertained.”

2 Luders,
P. 538.

These words evidently relate only to cases where the same tenant rents premises from different landlords, and then the property of each landlord shall be distinctly rated. The Cricklade committee (1785) seem therefore to have given a liberal construction to the words of the act, in the following case. W. Jacobs, and six others, were all rated in one joint sum. As it is stated that they were all in the occupation of *their* premises, it may be presumed that they occupied them in severalty; yet the votes of all the seven were allowed. In another case they made a similar decision; but there the occupation appears to have been joint. Jacob and Brome Pinnegar held an estate in common, and were rated thus: “ The
“ Mr. Pinnegars,” and they were both held to be duly assessed. The Bedfordshire committee seem to have given a narrow construction to the words of the act in the following instance.

Ib. p. 537.

Ib. p. 524.

The name of Thomas Whittal stood in the column of tenants thus,

“ William

“ William Boyes, and | Thomas Whittal,”
 and one sum assessed after their names. The
 estate belonged to these two, and, as the assess-
 ment was joint, and the proportion to be paid by
 each owner not assessed separately, as required
 by the third section of the act, the vote was re-
 jected. Here the committee seem to have pro-
 ceeded on a mistake, for it does not appear that
 the premises rated were in the occupation of
 different tenants. If they were in the occupa-
 tion of Boyes and Whittal *jointly*, they do not
 fall within this section of the act.

Assessment,
 joint or sepa-
 rate sums.

The second section of the act enacts, that
 where a person comes to lands, within twelve
 months before the election, by descent, marriage,
 &c. he may vote for them, if, within two years
 before the election, they have been rated in the
 name of the person through whom the voter
 claimed. The following cases came before the
 Bedfordshire committee.

Persons by
 devise, &c.

The father of the voter Henry Field, devised
 land to his children equally. The voter was
 under age, and the elder brother Thomas Field,
 was rated for, and managed the whole during the
 voter's infancy. The voter came of age within
 a year before the election; and his vote was held
 good.

2 Ludets,
 P. 528.

Thomas

Assessment,
estate by
devise, &c.

Thomas Cave came to his freehold by devise, within a year before the election; he was not assessed, but his mother was, and his vote held good.

2 Luders,
p. 528.
Ib. p. 531.

Richard Stanyan succeeded to the estate, for which he voted as heir at law to a Mrs. Wagstaffe, who died more than two years before the election. But he did not know of his right till within a year before the election, and after the assessment for 1783 had been made, and did not get into possession for some months afterwards. The estate was assessed in the name of *Mrs. Wagstaffe*. And his vote was rejected.

Ib. p. 528.

Richard Pedder voted for a freehold, assessed in the name of Thomas Britton. Britton had married the voter's father's widow, and held the estate till he came of age, and the voter had had possession only a few months. His vote was allowed; but that of William Mantle, under nearly similar circumstances, was rejected; but he was twenty-five years old. The estate was to be his mother's till he came of age, and his stepfather, ever since that time, had received the rents to his use.

Ib. p. 529.

Thomas Joyce voted for an assessment made thus, "Mr. Bull—Thomas Joyce" (tenant). He polled as owner of the estate, of which he had been tenant, in right of his wife, whom he had married a very short time before the election.

tion. Mr. Bull, named in the rate, had married her mother, and had managed the estate till she came of age, which was within two years before the election. It was objected that the tenement had not been assessed "within two years before the election, in the name of the person through whom the voter claimed;" for the voter claimed nothing through Bull, but in right of his wife through *her father*; besides, Bull had a personal interest in the estate by marrying the widow, who was entitled to dower, and it must be intended he was assessed on that account. The vote was rejected.

Assessment,
estate by de-
vise, &c.

Before we dismiss the assessment act, it may be material to state the general outline of proceeding in the Bedfordshire, Cricklade, and Buckinghamshire committees, as to the evidence produced before them, and in what cases the *onus probandi*, or burthen of substantiating his vote, was thrown upon the voter in the first instance.

General
mode of pro-
ceeding.

We have already mentioned some of the general rules proposed and adopted in the Bedfordshire case, it remains therefore to observe that in the Cricklade committee (1785) the parties were at first put to great trouble and expence, in bringing evidence to establish votes, merely because there had been an accidental change in the occupation of the premises after the assessment

2 Luders,
P. 515, 516.

Assessment,
general mode
of proceed-
ing.

ment was made. To obviate these inconveniences, the following supposed cases were put; viz.
1. A. polls for land in the possession of B. and is assessed for land in his own possession. 2. A. polls for land in the possession of himself, and is assessed for land in the possession of B. 3. A. polls for land in the possession of B. and is assessed for land in the possession of C. The question was, whether, in these cases, the party objecting ought not to prove, beyond this, that the fact agreed with these appearances, or the other party ought to proceed to reconcile them. The committee resolved, that "in these cases they" would consider the voter as duly assessed *prima facie*, so as to require evidence to impeach the "poll and assessment from the party objecting."

2 Luders,
p. 516.

In the Buckinghamshire committee there were two Mr. Kings in the same parish. William King was objected to, because the tenant to *Mr. King*, named in the rate, was not tenant to *William King*; and the committee resolved, "That the sitting member" (i. e. the party whose vote is objected to) "is to be put on" proof of the freehold of the voter, where only "the same occupier's name as is on the poll appears on the rate." The same rule obtained where the owner's name was not on the rate, but the tenant's only.

One

One *Edward Ryman* voted at the Buckinghamshire election, but the assessment was of *Mr. Ryman*. The committee resolved, "that when
" the christian name only of the voter is dif-
" ferent in the rate and poll, the party is not to
" be put on the proof."

Assessment,
general mode
of proceed-
ing.

2 Luders,
p. 516.

Notwithstanding the anxious solicitude shewn by the legislature, in the foregoing acts of parliament, to prevent the making of fraudulent and occasional votes, a mode of carrying on such practices with impunity was still left, by means of grants of annuities, and rent charges issuing out of freehold lands for a life or lives, or other greater estate; and these grants were the more frequently used as instruments of fraud, because transactions of this kind are generally of a private nature. But the statute of the 3 Geo. III. c. 24. has effectually remedied this evil, by enacting, that "no person shall
" vote for electing any knight or knights of a
" shire, citizen or citizens, burghers or burghesses,
" of any such city or town, for that part of
" Great Britain called England, for or in respect
" of any annuity or rent charge issuing out of
" freehold lands or tenements, and granted be-
" fore the first day of June, one thousand seven
" hundred and sixty-three, unless a certificate,

Registering
annuities.

Section 1.
Certificate to
be entered
with the
clerk of the
peace twelve
months before
the election.

L

" upon

Registering
annuities.

“ upon oath, shall have been entered, twelve
 “ calendar months at least before the first day
 “ of such election, with the clerk of the peace
 “ for the county, riding, or division, or with
 “ the clerk of the peace, town clerk, or other
 “ public officer, having the custody of the re-
 “ cords within such city or town, where such
 “ lands or tenements do lie, as follows ; (that is
 “ to say)

“ I A. B. of am really and *bona*
 “ *fide* seised of an annuity or rent charge,
 “ for my own use and benefit, of the
 “ clear yearly value of 40s. above all
 “ rents and charges payable out of the
 “ same, wholly issuing out of freehold
 “ lands, tenements, or hereditaments,
 “ belonging to C. D. of situate,
 “ lying, and being in the parish, town-
 “ ship, or place, or in the parishes,
 “ townships, of A. in the county of
 “ without any trust, agree-
 “ ment, matter, or thing, to the con-
 “ trary notwithstanding ; and I, or the
 “ person or persons under whom I
 “ claim, was or were seised with the said
 “ annuity or rent-charge before the
 “ first day of June, one thousand seven
 “ hundred and sixty-three.”

And, " That no person shall vote for the
 " electing any knight or knights of the shire, or
 " for a citizen or citizens, burghers or burghesses,
 " of any such city or town, for that part of Great
 " Britain called England, in respect of any an-
 " nuity or rent charge issuing out of freehold
 " lands, tenements, or hereditaments, which
 " shall come to such person by descent, mar-
 " riage, marriage settlement, devise, or presen-
 " tation to a benefice in a church, or promotion
 " to an office, within twelve calendar months
 " next before such election respectively, unless
 " a certificate upon oath, or affirmation if a
 " quaker, shall have been entered with the
 " clerk of the peace, town clerk, or other officer
 " as aforesaid, before the first day of such elec-
 " tion, as follows ; (that is to say)

Registering
annuities.

Section 2.

Certificate of
annuities or
rent charges
coming by
descent, &c.
within twelve
months, to
be entered
before the
first day of
the election.

" I A. B. of am really and *bona*
 " *fide* seised of an annuity or rent charge,
 " to my own use and benefit, of the
 " clear yearly value of 40 s. a year,
 " above all rents and charges payable
 " out of the same, wholly issuing out of
 " freehold lands, tenements, or heredi-
 " taments, belonging to C. D. of
 " situate, lying, and being in the parish,
 " township, or place, or in the parishes,
 " townships, or places, of in

Registering annuities.

"the county of _____ without any
"trust, agreement, matter, or thing, to
"the contrary notwithstanding; and I
"became seised of the said annuity or
"rent charge, on the _____ day of
"_____ last past by descent, or other-
"wise (as the case may happen)."

Section 3.

No person to vote in any election, in respect of any annuity or rent charge, unless a memorial of the grant be registered with the clerk of the peace twelve months before the election.

And, " That no person shall vote at any elec-
" tion of a knight or knights of the shire, or of
" any citizen or citizens, burghs or burghesses,
" of any such city or town, within that part of
" Great Britain called England, for or in respect
" of any annuity or rent charge to be granted
" after the said first day of June, one thousand
" seven hundred and sixty-three, unless a me-
" morial of the grant of such annuity or rent
" charge shall have been registered with the
" clerk of the peace of the county, riding, or
" division, or with the clerk of the peace, town
" clerk, or other public officer, having the cus-
" tody of the records within the city or town
" where the lands or tenements out of which
" such annuity or rent charge issues, shall lie,
" twelve calendar months at least before the
" first day of such election; which memorial
" shall be wrote on parchment, and directed
" to such clerk of the peace, town clerk, or
" other public officer, and be under the hand
and

“ and seal of the grantor or grantors, and at-
 “ tested by two witnesses, one whereof to be one
 “ of the witnesses to the execution of such
 “ grant, which witness shall upon oath, before
 “ such clerk of the peace, town clerk, or other
 “ officer as aforesaid, or their deputies, prove
 “ the sealing and delivering of such grant, and
 “ the signing and sealing of such memorial; and
 “ which memorial shall contain the day and
 “ year of the date, and the names, additions,
 “ and abodes, of the parties and witnesses, and
 “ all the lands and tenements out of which
 “ the annuity or rent charge issues, and the
 “ parish, township, or place, or the parishes,
 “ townships, and places, where such lands or tene-
 “ ments lie; and that every such grant, of which
 “ such memorial is so to be registered, shall,
 “ at the time of entering such memorial, be
 “ produced to such clerk of the peace, town
 “ clerk, or other officer as aforesaid, or their
 “ deputies, who shall thereon indorse a certifi-
 “ cate, in which shall be mentioned the day and
 “ year on which such memorial shall be so en-
 “ tered.”

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annuities.

Section 4.

And, “ That from and after the said first
 “ day of August, one thousand seven hundred
 “ and sixty-four, no person shall vote at any
 “ election of a knight or knights of the shire, or
 “ of any citizen or citizens, burgesses or burgesses,

Nor may any
 one vote in
 right of any
 assignment of
 any annuity
 or rent
 charge,

L 3

“ of

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annuities.

unless a certificate of the original annuity be entered as
afore said, and a memorial thereof, and of the original grant, to be registered as in cases of original grants.

Section 5.
Books to be kept for entering such certificates and memorials.

“ of any such city or town, in that part of Great Britain called England, by reason of an assignment
“ of any annuity or rent charge, or any part or parts thereof, made before the said first day of
“ June, one thousand seven hundred and sixty-three, unless a certificate of such assignment,
“ upon oath, to the purport hereinbefore mentioned, with respect to an original annuity or
“ rent charge, shall have been entered with such clerk of the peace, town clerk, or other officer
“ as afore said, twelve calendar months at least before the first day of such election; and that
“ no person shall vote at any such election as afore said, by reason of an assignment of any
“ annuity or rent charge, or any part or parts thereof, made after the first day of June, one
“ thousand seven hundred and sixty-three, unless a memorial of such assignment, and also a
“ memorial of the grant of such annuity or rent charge, of which such assignment shall
“ be made, shall have been attested and registered twelve calendar months at least before the first
“ day of such election, in the same manner as is hereinbefore directed, with respect to
“ the memorial of an original grant or rent charge.”

And, “ That the clerk of the peace of every
“ county, riding, or division, and the clerk of the peace, town clerk, or other officer as
“ afore said,

" aforesaid, of every such city or town, shall
 " keep a book or books, for entering of every
 " such certificate and memorial, and shall be al- Registering
annuities.
 " lowed for the entry of every such certificate
 " the sum of one shilling, and of every such Fees for en-
try and
search,
 " memorial, two shillings, and no more, and
 " for every search for any certificate and
 " memorial, one shilling, and no more; and
 " that any person or persons may, at all sea-
 " sonable times, resort to and inspect the cer-
 " tificates, memorials, and books of entries
 " thereof. And such clerk of the peace, town
 " clerk, or other officer as aforesaid, or other de-
 " puties, is hereby directed and required forth-
 " with to give a copy of any certificate or me-
 " morial, to any person or persons who shall de-
 " sire the same, paying for such copy, if it con- and for co-
pies.
 " tains not more than two hundred words, the
 " sum of six pence, and so in proportion for any
 " greater number of words; and such clerk of
 " the peace, town clerk, or other officer as afore-
 " said, or their deputies, is hereby impowered to
 " administer an oath in all cases where an oath
 " is required by the act; and true copies of the Copies attest-
ed by the
proper of-
ficers, deem-
ed legal
evidence.
 " aforesaid certificates and memorials, attested
 " by such respective clerk of the peace, town
 " clerk, or other officer as aforesaid, or their
 " deputies, shall at all times be allowed and ad-
 " mitted as legal evidence in all cases whatso-
 " ever."

**Registering
annuities.****Section 6.**

Memorials of
grants or as-
signments,
made above
forty miles
from the of-
fice of clerk
of the peace,
&c. how to
be registered.

Provided, " That a memorial of such grant or
" assignment as shall be made and executed in
" any place not within forty miles of the office
" of the clerk of the peace for the respective
" county, riding, or division, or of the town
" clerk, or other officer as aforesaid, shall be en-
" tered and registered by such clerk of the
" peace, town clerk, or other officer as afore-
" said, or their deputies, in case an affidavit
" sworn, or affirmation of a quaker, before one
" of the judges at Westminster, or a master in
" chancery, ordinary or extraordinary, be
" brought with the said memorial to the said
" clerk of the peace, town clerk, or other
" officer as aforesaid, wherein one of the wit-
" nesses to the execution of such grant or as-
" signment, shall swear that he or she saw the
" same executed, and the same shall be a suffi-
" cient authority to the clerk of the peace, town
" clerk, or other officer, or their deputies, to
" give the party that brings such memorial a
" certificate of the registering such memorial;
" which certificate, signed by the said clerk
" of the peace, town clerk, or other officer as
" aforesaid, or their deputies, shall be taken
" and allowed as evidence of the registry of the
" same memorial, in all courts of record whatso-
" ever, any thing herein contained to the con-
" trary notwithstanding.

And

“ And that the clerk of the peace of every
 “ county, riding, or division, and the clerk of
 “ the peace, town clerk, or other officer as
 “ aforesaid, of every such city or town, or their
 “ deputies, shall, upon reasonable notice, attend
 “ at any such election, with the book or books
 “ of entries of every such certificate and memo-
 “ rial, at the request of any candidate or candi-
 “ dates, he or they making him reasonable satis-
 “ faction for such attendance.”

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 annuities.

Section 7.

Officer or de-
 puty to at-
 tend with the
 books of en-
 tries at elec-
 tions.

By the 8th section, any officer, guilty of neglect, forfeits 100*l.* to any person who will sue for it; and by section 12, the prosecution must be commenced within twelve months.

Several questions upon the construction of this act came before the Gloucestershire committee.

In the case of John Smith, as neither reserved Gloucester,
 nor fee farm rents are mentioned in the act, it P. 58.

was “ resolved, *nem. con.* that a reserved or fee
 “ farm rent need not be registered under the act
 “ for registering annuities.” And in the case of Ib. p. 127.
 Samuel Harrington, it was resolved, that an an-
 nuity, coming to a voter by devise, need not be
 registered. The resolution was in these words:

“ Resolved, *nem. con.* that the annuity for which
 “ Samuel Harrington voted, and which devolved
 “ to him in 1762, by the will of John Dee, does
 “ not require to be registered.”

In the Bedfordshire case, it was made a ques- 2 Luders,
 tion, Whether annuities, coming by devise, need P. 504.

be

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annuities.

be registered? It was argued, that the statute was made expressly to prevent fraudulent grants of annuities, and *grants* must be made *inter vivos*. That this was the intent of the act is clear, because the memorial is to be under *the hand and seal of the grantor*, and the witness to *the execution of the grant* is to attest the sealing and delivery, at the time of the registration. That the second section of the act confirms this exposition of it; for that section requires registration of annuities obtained by *devise*, only when they come within twelve months before the election. But the same committee, in the case of Edward Pincard, who voted for an annuity which was not registered, charged by will on the testator's estates, which were assessed in the names of the owners, rejected the vote.

2 Luders,
P. 505.

Gloucester,
P. 38.

An annuity must be described, when registered, according to the fact, whether it comes by descent, marriage articles, &c. Mr. Bathurst had an annuity secured to him by the marriage settlement of his father, and registered it as coming *by descent*; the Gloucestershire committee, therefore, rejected his vote; but the committee were at first equally divided upon the question, and it was carried against Mr. Bathurst's vote by the casting voice of the chairman.

2 Luders,
P. 500.

Mr. Luders has observed, that the regulations of this act do not seem to have been intended for cases of annuities annexed to offices. And therefore,

fore, in a case where the Rev. John Jones voted for an annuity, or payment of 20*l.* a year, in lieu of tythes, it was moved in the Gloucestershire committee, and carried in the negative, thirteen against one, "that the Rev. John Jones, standing
" on the poll as voting for *a salary issuing out of*
" *great tythes*, is obliged to register the same
" under the act for registering annuities or rent
" charges."

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annuities.

See William
Gale's case,
p. 138.

C H A P. VI.

OF THE PERSONAL DISQUALIFICATIONS OF VOTERS, AND HEREIN OF ALIENS, DENIZENS, PERSONS NATURALIZED, WOMEN, INFANTS, IDEOTS, LUNATICS, PERSONS RECEIVING CHARITY OR ALMS, REVENUE OFFICERS, PEERS, CLERGYMEN, SHERIFFS, CANDIDATES, SECTARIES IN GENERAL, QUAKERS, PAPISTS, JEWS, OUTLAWS, PERSONS EXCOMMUNICATED, FELONS, PERSONS CONVICTED OF PERJURY OR SUBORNATION OF PERJURY, PERSONS GUILTY OF BRIBERY, AND SMUGGLERS.

Aliens.

THE first class of persons disabled from voting at county elections, are those who, not being subjects of Great Britain, are supposed to feel no interest in its welfare; and therefore are not to be intrusted with the choice of its legislators. An alien, generally speaking, is one born out of the King's dominions or allegiance; but this must be understood with some restrictions; for, by the 7 Ann. c. 5. 4 Geo. II. c. 21. and

1 Bl. Com.
P. 373.

and 13 Geo. III. c. 21. all children born out of the King's ligeance, whose fathers (or grandfathers by the father's side) were natural born subjects, are now deemed natural born subjects themselves, unless their said ancestors were attainted or banished beyond sea for high treason, or were, at the birth of such children, in the service of a prince at enmity with Great Britain; but they shall not claim any estate or interest, unless the claim be made within five years after the same shall accrue. An alien born may acquire a property in personal estate, and may take a house for term of years for a habitation, for the purposes of trade; but if he purchases a freehold estate of any sort, or takes a lease for years of lands, or even, not being a merchant, of a house, upon office found, the King will be intitled to them. Thus an alien can not be qualified to exercise a franchise incident only to an estate of freehold, which he can not hold. But the common law considers an alien as incapacitated to vote, not merely because he cannot hold the requisite qualification in land, but because he labours under a personal incapacity; in consequence, an alien cannot be elected or appointed to any public office whatever; nor can he vote at any election of members to serve in parliament, whether the right of election is vested in the owners of land, in persons

Co. Litt.
p. 2. b.

Aliens.

12 Journ.
P. 367.

sons locally resident within a certain district, or in any other classes of voters.

In the case of Westminster, 22d December, 1698. The House of Commons, after the report of the committee had been made, resolved, *nem. con.* that no alien, *not being Denizen, or "naturalized,* hath any right to vote in elections "of members to serve in parliament;" and ordered, that a clause to that effect should be inserted in a bill then before the House; which, however, was not done, and the exclusion of aliens still remains as at common law.

22 Journ.
P. 445. 446.

Southampton, 3d April, 1735.—The right of voting had been determined, in 1695, to be in the burgesses and inhabitants. Several were objected to as aliens; nor was it disputed that aliens were disqualified; but, to restore them on the poll, it was shewn that acts of naturalization had passed in their favour, and that they had taken the oaths.—Oxfordshire, 25th February, 1755, a voter was objected to, and evidence produced to disqualify him as an alien; and so Yorkshire, 22d April, 1736.

27 Journ.
P. 177.

22 Journ.
P. 696.

Denizens.

An alien born, who has obtained *ex donatione regis* letters patent to make him a British subject, is termed a *Denizen*. He may take lands by devise or purchase, but not by inheritance, and may vote (when qualified in other respects) at the

the elections of members to serve in parliament.

Denizens.

—This indeed may be inferred from the case of Westminster, just cited.

An alien born can be naturalized only by act of parliament; he is enabled to vote at the election of members, and is in all respects placed in the same situation as a natural-born subject, except only some political disabilities that he, as well as a denizen, labours under; as, that he cannot be a member of the privy council, or parliament, &c. Every foreign seaman is, by the 13 Geo. II. c. 3. naturalized *ipso facto*, who, in time of war, serves two years on board an English ship, by virtue of the King's proclamation; and all foreign Protestants and Jews, residing seven years in any of the American Colonies, without being absent two months at a time; and all foreign Protestants, serving two years in a military capacity there, or being three years employed in the Whale Fishery, without afterwards absenting themselves from the King's dominions for more than one year (except those disabled by the 4 Geo. II. c. 21.) shall be (upon taking the oaths of allegiance and abjuration, or in some cases making an affirmation to the same effect) naturalized.

Naturalized.

1 Bl. Com.
P. 375.

A second class of persons disabled from voting at these elections are those, who, holding freehold

Women.

hold lands and tenements, either lie under natural incapacities, and therefore cannot exercise a sound discretion, or are so much under the influence of others, that they cannot have a will of their own in the choice of candidates; of the former description are women, infants, ideots, and lunatics; of the latter, persons receiving alms, and revenue officers.

4 Inst. p. 5.

1. Lord Coke mentions "all women, having "freehold or no freehold," with persons within age, &c. as instances of people bound by acts of parliament, who are not parties to the elections of knights, citizens, and burgessees, and so the law is understood to be at the present day. But there have been elections in which women have interfered, and actually in person, or by attorney, made or joined in making the return. Thus Gatton, March 26, 1628. There were two returns; one by the inhabitants of Gatton, the other by Mr. Copley only. Mr. Copley insisted, that he was the sole inhabitant, and in the 33 Hen. VIII. the return was made by Copley as such, and in 1 & 2 Mary, and 2 & 3 Ph. and M. *Mrs. Copley** made the like return. On the other part was produced a return of 7 Ed. VI. by Mrs.

1 Carew,
P. 245.

* In the printed copy of the Journals (vol. I. p. 875.) the name of *Mr. Copley* is here inserted; but, from a marginal note in Carew, it should seem that it is a mistake.

Copley, *et omnes inhabitantes*. Resolved, by the committee, that those which had lands in their own manurance, though dwelt out * * * *cetera desunt*. The House resolved, that the return by Mr. Copley was void, and to be taken off the file, and the return of the others good. In the case of Aylesbury, in the 14 Eliz. the return was made by *Dame Dorothy Packington**. And in some returns for the county of York, mentioned by Prynne, the attorneys, not only of lords,

Women.

Brev. Parl.
red. p. 152.
153.

* The return is curious, and not long, I therefore insert it here, as extracted by Brady from the bundle of returns in the 14th year of Queen Elizabeth's reign, preserved in the Chapel of the Rolls. "To all Christian people to whom this present writing shall come. I, *Dame Dorothy Packington*, widow, late wife of Sir John Packington, knt. lord and owner of the town of Aylesbury, sendeth greeting. Know ye, me, the said Dame Dorothy Packington, to have chosen, named, and appointed my trusty and well-beloved Thomas Lichfeld and George Burden, esquires, to be my burgesses of my said town of Aylesbury. And whatsoever the said Thomas and George, burgesses, shall do in the service of the Queen's Highness, in that present parliament to be holden at Westminster, the eighth day of May next ensuing the date hereof, I, the same Dame Dorothy Packington, do ratify and approve to be my own act, as fully and wholly as if I were or might be present there. In witness whereof, to these presents I have set my seal, the fourth day of May, in the 14th year of the reign of our sovereign Lady Elizabeth, by the grace of God, of England, France, and Ireland Queen, Defender of the Faith, &c."

M

but

Women.

but of *ladies* also, joined in the return; thus in the 2 Hen. V. *Rob'tum Barry, attorn. Margarete que fuit Uxor Henrici Vavasour, chl'r.* sealed the indenture of return.

Infants.

2. As to infants. In the state of childhood human beings are incapable of acting with reason and discretion; and the municipal laws of all countries have fixed some certain period, at which they are presumed to have attained the strength of body and mind necessary to conduct them in the affairs of life. That period is fixed by the law of England at the age of twenty-one years. An infant, or person under that age, is capable of purchasing, as well as of inheriting land, because it is intended to be for his benefit, and the freehold will vest in him till he disagrees thereto, which he may do at any time during his minority; but if, at his full age he agrees to the purchase, he cannot afterwards avoid it. But, though he may be possessed of a freehold estate of greater value than 40*s. per annum*, before he attains twenty-one, yet he is not thereby intitled to vote at the election of members to serve in parliament; for he is, till that age, supposed to be incapable of forming any judgment of the merits of the several candidates, or of knowing for whom he ought to give his suffrage. Lord Coke mentions "men within the age of twenty-one years,"

4 Inst. p. 5.

as

Infants.

as instances, with others, of people bound by acts of parliament, who are no parties to the election of knights, citizens, and burgesſes. And, in confirmation of the common law, the 7 & 8 W. III. c. 25. ſ. 8. enacts, that no perſon whatſoever, being under the age of twenty-one years, ſhall be admitted to give his voice for election of any member or members to ſerve in that or any future parliament. And, for further ſecurity againſt infants polling, every freeholder (if required) is obliged, by the 18 Geo. II. c. 18. ſ. 1. as part of the freeholders oath, to ſwear, (or, if a quaker, to affirm), that he is twenty-one years of age, as he believes. The Journals contain inſtances, before the ſtatute of 7 & 8 W. III. of minors claiming to vote, in almoſt all the different forms in which the right of voting is modified by charters or preſcription in different boroughs. And in Taviftock, 8th December, 1691, where the right of election was in the freeholders, and this objection was made againſt one voter, he was given up by the candidate for whom he had voted. Since the ſtatute no queſtion can ariſe.

10 Journ.
p. 576.

3. An ideot is one who is a fool or madman from his nativity, and never has any lucid intervals. The King, therefore, has the protection of him and his eſtate during life, without render-

Ideots.

Ideots.

ing any account, because it cannot be presumed that he will ever be capable of taking care of himself or his affairs; but, as the law presumes that every person of the age of discretion is of sound mind and memory, unless the contrary appears, the King cannot take the estate, until an inquisition has been issued out of and returned into the Court of Chancery, to inquire whether he is an ideot or not. After such inquisition returned, and the Crown, on behalf of the public, is in possession of his freehold, he is not entitled to vote; and, though no inquisition should issue, the candidates, or sheriff, always have the power of excluding him, by insisting upon his complying with all the legal requisites, and rendering him the oaths when he comes to vote. At the Bedfordshire election, William Burgess was objected to, because he was an ideot; but the fact was not sufficiently made out in evidence to the committee.

2 Luders,
P. 567.

Lunatics.

4. A lunatic is a person who is sometimes of good and sound memory and understanding, and sometimes not. He may be seised of freehold estates, but he is incapable of governing himself, or his own affairs; he has not understanding sufficient to direct him how he should vote; and therefore, by the common law, he is excluded from that privilege. By the statute *de prerogativa regis*

regis (17 Ed. II. c. 10.) the King is to provide, that the lands and tenements of lunatics shall be safely kept; that they shall be maintained out of the profits; and that the remainder shall be kept to their use, to be delivered unto them when they come of right mind. The best protection, perhaps, of the sheriff against mistakes in the admission or rejection of the votes of lunatics, as well as ideots, is to be strict with persons suspected to be such, as to the taking of the oaths, declaring for whom they mean to poll, &c. In the case of Bishop's-Castle, 4th February, 1699, the vote of Henry Wollaston was objected to, as a lunatic; it was proved, that he had been in Bedlam three or four years before, had lost his living for not taking the oaths, and had acted like a madman; but was not so at the election, and answered rationally about taking the burgessees oath, and had preached a short time before. So Wendover, 22d November, 1702, one Bening was excepted to, as "a melancholy man, and "scarce *compos mentis*; that his vote was carried "by others to the place of polling, he being at "some distance from it, and that he only named "Mr. Hampden. Though a witness for the "sitting member said he named Hill short."—In either of these cases the sheriff would not be justified in rejecting the vote; because, in the latter, the voter was not objected to as being

Lunatics.

13 Journ.
P. 172.13 Journ.
P. 42.

Lunatics.

20 Journ.
P. 77.

27 Journ.
P. 177.

wholly lunatic, but *scarce compos mentis*, which admits that he was just in a situation to give his vote; in the former, whatever he had been three or four years before, would make no difference, if he presented himself to the sheriff when he was of sane mind. But, in the case of Malmesbury, 13th December, 1722, one Gingel was objected to as "being *non compos*, and thereby incapable of declaring his vote at the time of the election;" and here the sheriff would be bound in duty not to receive his vote. And in the Oxfordshire case, 25th February, 1755, a voter was disqualified, "as being insane, and so disordered in his senses, that he could not repeat the oaths."

Alms.

5. The word, "alms," is immediately derived from the French, "aumosnes," anciently written "almosnes;" and that again comes from the Greek "Ελεημοσυνη," which is defined to be, "*omne beneficium, quo calamitosos prosequimur.*" In its primary sense then, "alms" is a generic term, comprehending every species of relief bestowed upon the poor, thus including *all* charities; but, in this sense, it is rarely, if ever, used in the resolutions of the House of Commons. In its most confined and popular sense, it signifies *parish relief**, provided for necessitous persons, by

* Alms, in this sense, is synonymous with *collection*; for one of the modes pointed out by statute, (see 27 Hen. VIII. c. 25.

by virtue of the act of 43 Eliz. but it is sometimes made to include also *certain charitable donations.*

Alms.

There is no doubt that, by the custom of particular boroughs, the receipt of parish relief may operate to the disqualification of voters; but it has been much disputed of late, before the select committees, whether it is a disqualification at the common law, equally affecting voters of all descriptions, and for all places. Whitelocke seems to treat it as a general exception; for he says, "and at this day, in ancient cities and boroughs, for the most part the elections still remain popular and free by all the inhabitants, except *almsmen*, and such like." If it is a general disqualification, the numerous resolutions of the House of Commons, in which it is mentioned, must be taken as declaratory of the common law; and, indeed, it occurs so frequently, that one can hardly consider it merely as an exception founded on local custom. There are some cases, however, which, by confining the disqualification to the receipt of parish relief *in the borough for which the elector votes*, seem to imply, that it depends upon custom only.

Vol. 1.
p. 386.

c. 25. 1 Ed. VI. c. 3.) for relieving the poor before the 43 Eliz. was by *collection* made on Sundays at the parish church. It is still used at Bedford, and other places, in this signification; see 2 Dougl. p. 100.

Alms.

20 Journ.
p. 300.

Ibid. p. 366.

10 Journ.
p. 457.

2 Dougl.
p. 77.

Ib. p. 338.

Launceston, 13th March, 1723, the right of election was resolved, by the committee and the House, to be "in the mayor, aldermen, and free-
" men, being inhabitants at the time they were
" made free, *and not receiving pay of the parish.*"

—Honiton, 18th December, 1724. The right of election was determined by the committee, and agreed by the House, to be "in the inha-
" bitants, housekeepers within the said borough,
" commonly called pot-wallers, *not receiving alms*
" *of the parish.*"—And, in the case of Sandwich, 31st October, 1690, the committee reported, that "the freemen of the port of Sandwich,
" inhabiting within the said port, *although they*
" *receive alms*, have a right to vote in electing
" barons to serve in parliament;" but the House disagreed.

In the case of Bedford, the counsel for the sitting member said, that "the receipt of alms
" is *probably* a disqualification by the common
" law of parliament." And in that of Haslemere, a voter was objected to, "as having re-
" ceived parish relief, (*if the committee should*
" *think that a disqualification*)." So that in both cases the position appears to have been advanced with diffidence. In the last determination of the House, upon the right of election at Haslemere, the word "alms" is not mentioned; so that the objection there was founded merely upon the com-

mon

mon law of parliament. The committee determined the merits of the election upon other points, so that this was not decided.

Alms.

In the Downton case it was said by counsel, in argument, that receiving of alms "is not in any case a disqualification, where the right of voting is not *personal*, as it is in scot and lot, or corporation rights of election; that *there is no resolution to disqualify freeholders of a county by receipt of alms*, and *a fortiori* it cannot hold in burgage tenures." This unqualified assertion is certainly not founded in fact; for the following case shews the disability may attach, where the right of voting is not personal, and where persons claim a right to vote as burgage tenants. Westbury, 1st June, 1715. The committee resolved, and the House agreed, "that the right of election of members to serve in parliament for the borough of Westbury, in the county of Wilts, is in every tenant of any burgage tenement in fee, for life, or 99 years determinable on lives, or by copy of court roll, paying a burgage rent of 4*d.* or 2*d.* yearly, being resident within the borough, and not receiving alms." And in the case of Great-Bedwin, 26th March, 1729, where the right was in the freeholders and inhabitants of ancient burgage messuages, one voter was objected to, as having received alms.

1 Luders,
P. 197.

18 Journ.
P. 154.

21 Journ.
P. 296.

The

Alms.

The principle on which the receiving of alms must be supported as a disability by the common law of parliament, is, that the voter who receives them, must be presumed to be in so low a state of indigence that he cannot have any independent will of his own, or exercise a sound discretion in giving his vote. The poverty of the voter is the matter to be ascertained, and the receipt of alms is the evidence to prove it. If we assume, with some writers, that those only could vote at elections, who were obliged to contribute to the expences of the members, persons in the most abject state of poverty, subsisting upon the charitable donations of others, must necessarily have been excluded, for they had nothing to contribute. The sheriff having, after the 7 Hen. VI. power to examine every voter, upon oath, whether he could expend 40 s. by the year, this question was not likely to be agitated at county elections; and for this reason, perhaps, all the earlier questions upon this point came before the House upon borough petitions; but, from the diminution of the value of money, 40 s. which was in 1429 a sufficient income, will now do little towards the maintenance of a poor man's family; and therefore, it has not been unusual of late years to find freeholders, in the enjoyment of the requisite qualification, obliged by necessity to ask succour of the parish.

In

In the case of the county of Essex, 17th May, 1716, it appears, that four were objected to because "they received charity." And in that of Yorkshire, 16th Jan. 1735, the petition stated, as an objection, that several polled "which were "only hospital men, and received alms." And in the case of Oxfordshire, 11 March, 1755, a voter was disqualified "*as receiving alms*, and "*as not being in possession of the freehold for "which he voted;*" and 15th March, three others were disqualified as not properly assessed, and "*as being almsmen.*" The question was agitated before the Gloucestershire committee; but, as the number of paupers, (i. e. as used there, persons receiving alms *and charity*,) was nearly equal on both sides, it was not argued by either, and in the course of the proceedings it was unnecessary for the committee to come to any resolution. But that committee having in another instance allowed evidence to be produced, to impeach a vote, that the overseer had given relief to the voter's wife for his use, it must either have been conceived to be a disqualification, or, reserving the question of, How far it should disqualify? to future discussion; the committee, as is more probable from the form of the resolution, may have determined only, that the evidence was admissible.

In the Bedfordshire case, John Houghland
was 2 Luders,
p. 563.

Alms.

18 Journ.

P. 447.

22 Journ.

P. 499, 500.

27 Journ.

P. 202, 232.

Gloucester,

P. 178.

Ib. p. 125.

Alms.

—

2 Loders,
p. 565.

was objected to, as having received alms within a year before the election. The vote was determined to be good, and a motion negatived, "that parish alms paid to a freeholder do in-
" validate his vote, although he continues in
" possession of a freehold of the clear yearly
" value of 40 s." In the subsequent case of Charles Myers, the committee explained this resolution to mean, "that parish relief made no
" disqualification while the voter retained the
" possession of his freehold." The voter received parish relief, but was in possession of an estate from which he received 40 s. a year, and in consequence of that, the parish allowed him so much less than they would have otherwise done. It was argued that he did not, under these circumstances, receive the rent as owner, but as agent for the parish, to whose benefit it was applied. The committee held the vote to be good.

Ib. p. 567.

The Cricklade committee had, before this, come to a contrary determination, in the case of one Robert Strange; for they resolved, that he
" having, within twelve months before the elec-
" tion, received parish relief, was thereby dis-
" qualified from voting."

It should seem, that where the wife of the voter has received relief from the parish, for the use of
her

her husband, or his family, it will affect him exactly as if he had received it with his own hand. So it was held in the Gloucestershire case, as before stated. But in the case of Sudbury, it was doubted how far the wife or children of a voter, living separate from him, could disqualify him by receiving parish relief; and the committee came to no resolution.

Alms.

Pa. 171.
Phillips,
p. 203.

Gatton, 3 November 1641.—The committee reported that there was no dispute about Mr. Owfield's election, and that Mr. Sandys and Mr. Sanders were returned by two indentures. The latter had fourteen votes, the other eight; but of the fourteen, all of whom had freeholds in the town, eight lived out of the town, and one of them was a minister; and of Mr. Sandys's eight votes, one was a recusant convict, and another clerk of the parish, who received yearly wages of the parish; and, if those who lived out of the town were rejected on the part of Mr. Sanders, and these two should have no votes on the other side, the numbers would be equal: so the question was, Whether the election was in the burghesses of common right, or that the freeholders dwelling out of the town ought to have vote by a particular prescription. The committee were of opinion there was a prescription, which was good against a common right. Three questions besides were made,
1st, Whe-

2 Journ.
p. 303.

Alms.

1st, Whether the parson of the parish shall have a voice, who could not sit here if he were chosen. 2d, Whether a recusant convict ought to have a voice ;—but on neither of these points do any resolutions appear. 3d, *Whether one that receives alms of the parish shall have a vote ; and then, whether the clerk of the parish, who receives 50 s. per annum of the parish, is one that lives of the alms of the parish.* The House, upon the report of the committee, resolved, that there is no sufficient proof of a prescription against the common right within the borough of Gatton. That *How*, the parish-clerk of the borough of Gatton, does not appear, upon the evidence given to this House, to be an almsman. The House also resolved, that Mr. Sanders's election was not good, but that Mr. Sandys ought to sit. Mr. Sandys having a majority of one, by the allowance of the vote of the parish-clerk, it accounts for there having been no determination on the right of the parson, and the popish recusant convict.

There may however arise extraordinary cases, in which the receipt of parish alms (assuming that it is an objection at common law) may not disqualify. Thus in the Cricklade committee (1785) it was resolved, " that those persons who " submitted themselves, or their families, to be " inoculated, in the year 1783, by the invitation " of the parishes of Cricklade, and received

“ relief in consequence of such inoculation, were
“ not thereby disqualified from voting at the
“ last election.”

Alms.

By 18 Geo. III. c. 59. s. 25. it is provided,
“ That any parish relief which shall be given
“ to the family of any militia-man, during the
“ time of actual service, shall not deprive such
“ militia-man from voting for the election of
“ any member to serve in parliament.”

“ Charity,” in the law of parliament, has
been defined to mean any sum of money, or
other emolument, arising from certain *specific*
funds appropriated to the assistance of persons in
mean or poor circumstances. And a distinction
may be made between charities which are of
such a nature as to imply that the partaker of
them is in a state of indigence and abject de-
pendence, and those from which no such infer-
ence can be drawn. With respect to the former,
they, like parochial relief, may work a disqualifi-
cation of those who receive them, by proving
their incapacity to exercise a will of their
own in the choice of a representative. Some-
times, therefore, they are included with parish
relief in the general term “ alms,” at others they
appear, in the resolutions of the house of com-
mons, as a substantive disqualification of them-
selves.

Charities
disabling.

In

Charities.
disabling.

15 Journ.
P. 135.

8 Journ.
P. 550.

10 Journ.
P. 326.

In the case of Leicester, 8 February 1705. The right being in the freemen *not receiving alms*, and the inhabitants paying scot and lot, evidence was given to incapacitate several voters, that *they "lived in hospitals, had the rent of their houses paid, or received weekly collections."*—

Northampton, 26 April 1664. The committee resolved, and the House agreed, that the right of election was in the inhabitants of the town, "being householders, and not receiving alms; and that *the sharing in the charitable gift appointed to be distributed at Christmas, is a taking of alms.*"

Abingdon, 8 January 1689.—The right of election is not stated (but upon a former occasion it was admitted to be in the scot and lot men) but several voters were objected to, as having received money or bread *weekly*; as having been assisted by money given at the sacrament, which was administered *monthly*; as having received relief *quarterly* from the hospital, or been relieved by *yearly* gift. The committee resolved, "That all those who receive alms, according to the act of parliament, have no voices in the election of a burgess to serve in parliament for the borough of Abingdon;" and "that those inhabitants who receive any constant alms, weekly, monthly, quarterly, or yearly, in Abingdon, have no voices in the election

“ election of a burghers to serve in parliament for
“ the borough of Abingdon.” The House
agreed to the first resolution; and, after an amend-
ment had been proposed and negatived, to leave
out the words “ quarterly or yearly,” in the
second, agreed to that also.

Charities
disabling.

Coventry, 1 March 1708.—The right of elec-
tion was in such persons who have served appren-
ticeships for seven years within the city, to one
and the same trade, not receiving alms or con-
stant charities. The petitioners counsel pro-
ceeded to disqualify votes, for having received
parish charities; and the sitting members coun-
sel representing that they could not, on the other
side, disqualify those who had received the sacra-
ment and bread money, because the ministers
and churchwardens alledged they kept no ac-
count of them; and witnesses having been exa-
mined to that matter, it was resolved by the
House, that the petitioner should be restrained
from giving evidence to disqualify any of the
sitting members votes upon that account. Here
it seems to have been admitted on both sides, that
the receipt of sacrament money or bread mo-
ney did disable. The petitioner then proceeded
to disqualify votes on account of their receiving
Sir Thomas White’s gift (which is a gift of 40s.
annually to each of the objects of his charity) and
the question being put in the House, that they were

16 Journ.
p. 129.

N

disabled

Charities
disabling.

16 Journ.
p. 135.

disabled by receiving it ; it passed in the negative. On the 3d of March, when several voters were objected to for having received Thomas Wheatley's gift (which is a gift of 30*s.* annually to those entitled to the charity) and other gifts of like nature, which they insisted were such charities as disabled them from voting, it was moved, that persons receiving Thomas Wheatley's gift were thereby disabled ; and an amendment proposed, but negatived, to leave out the word " gift," and instead thereof to insert " charity." Afterwards the main question being put, passed also in the negative. — 13 December 1711. The committee of privileges resolved, and the House agreed, " that the members of the company of Fullers of the city of Coventry, not receiving alms or *weekly charity*, have a right to vote in the elections of members to serve in parliament for the said city." And, " that such freemen of the city of Coventry as do not receive alms or *weekly charity*, and have served seven years apprenticeship within the said city, or the suburbs thereof, have a right to vote," &c.

17 Journ.
p. 136.

" Alms" has been sometimes mentioned in the same resolutions with charities, where the receipt of either would, by the custom of the place, or the nature of the charity, disqualify the voters.—Taunton, 28 July 1715. The right of election

18 Journ.
p. 241.

election was resolved to be in the inhabitants within the said borough, being potwallers, and not receiving alms *or charity*. And when this resolution was moved, an amendment was proposed, by leaving out the words "or charity;" but on the question being put, that they do stand part of the question, it passed in the affirmative.—Abingdon, 18 January 1708. The right of election was resolved to be in inhabitants paying scot and lot, and not receiving alms, or *any* charity. So Maidstone, 7th February 1701. The right of election was agreed to be in the freemen not receiving "alms or charity." And these words are in the following resolutions, Norwich, 12 March 1701.—Wallingford, 15 December 1709.—Shrewsbury, 20 December 1709.—Grantham, 11 January 1710.—In the case of Stamford, 8 March 1735, the House resolved the right of election to be in the inhabitants paying scot and lot, and not receiving alms, or *public charities*.

Aylesbury, 28 January 1695-6. The right of election was resolved to be "in all the householders of the said borough, not receiving *alms*." At a subsequent election, 7 February 1698-9, a question arose, Whether the following charity disqualified such electors as received it. One John Bedford, in the 9 Hen. VII. devised lands of about 120*l.* a year for the repair of the

Charities;
disabling.

16 Journ.
P. 63.

13 Journ.
P. 732.

Ib. p. 790.

16 Journ.
P. 243.

Ib. p. 248.

Ib. p. 454.

22 Journ.
p. 616.

11 Journ.
P. 419.

Bedford's
charity.
12 Journ.
p. 487.

Charities
disabling.

12 Journ.
P. 490.

16 Journ.
P. 26.
Kendrick's
charity.

1b. p. 27.

highways about Aylesbury, and *to be dealt in alms to blind people, crooked, sick, and poor people.*

In 39 Eliz. an act of parliament vested this trust in nine persons, who are made a corporation by the name of the surveyors of the highways of Aylesbury, to carry the will into effect. This charity is accordingly distributed on every St. Thomas's Day, by the feoffees, to the poor of Aylesbury, by 2 s. 2 s. 6 d. or 3, 4, or 5 s. apiece, or such small sums, and is commonly continued to the same persons for their lives; but it is in the discretion of the feoffees to change them, if they think fit; and for this charity they account every three years to the bishop of Lincoln. On 7 February 1698-9, the House (upon the report of the committee of privileges) resolved, that "all persons receiving *alms* within "the borough of Aylesbury, pursuant to the will "of Mr. Bedford, or any other persons receiving any *other charity* annually distributed "within the same town, are, in respect thereof, "disabled to vote in the election of burgeses to "serve in parliament for the said borough."

In the case of Reading, 2 December 1708, it was resolved by the House, that the right of election was in the freemen and inhabitants, such freemen not receiving alms, and such inhabitants paying scot and lot. On the 4 December 1708, a motion being made, and the question being

being put, "that such persons as have, within
 "two years last, received Kendrick's charity,
 "or any other annual charity distributed in the
 "borough of Reading, have a right to vote
 "in elections of burgessees to serve in parliament
 "for the said borough;" it passed in the *neg-*
ative. It does not appear that any voters were
 objected to for having received any other annual
 charity, or that there were any other such. This
 resolution has been recognized in subsequent
 elections; and on 26 January 1740, witnesses ^{23 Journ.}
 were examined at the bar of the House to dis- ^{P. 616.}
 qualify under it.

Charities
disabling.

In the case of Bedford, the last resolution, as ^{2 Dougl.}
 to the right of election, was 12 April 1690, ^{P. 113.}
 that "it is in the burgessees, freemen, and inha-
 "bitants, being householders of Bedford, *not re-*
ceiving alms." One Robert Welborn, in 1716, ^{Welborn's}
 left a close, now let for 4 *l.* 10 *s.* *per annum*, to ^{charity,}
 the ministers and *overseers of the poor* of St. John's
 parish in Bedford, to be distributed to the poor
 on New Year's Day; and it appeared to be distri-
 buted in sums of 3 *s.* or 4 *s.* to each person,
 and that the usage and reputation of the bo-
 rough was to admit the votes of those who receiv-
 ed it, and that they are often rated to the poor.
 Yet the committee resolved, "that the persons ^{Ib. p. 132.}
 "who voted at the last election for Bedford,

“ having received Welborn’s charity, are there-
 “ by disqualified.”

Limitation
 of time for
 receipt of
 alms, &c.

2 Dougl.
 P. 127.

14 Journ.
 P. 42.

18 Journ.
 P. 286.

“ As a person, who is at present in indigent
 “ circumstances, may afterwards become affluent
 “ and independent, and *vice versa*, it cannot be
 “ supposed that the receipt of alms, or of any
 “ particular charity (in cases where that disqua-
 “ lifies) should operate at an unlimited distance
 “ of time.” Some line must be drawn; and
 that line, by the established custom of parlia-
 ment, seems to be one year before the election,
 unless in particular cases, where, either by special
 usage, a determination of the House, or an act
 of parliament, some other rule is laid down.—
 In the case of Wendover, 22d November 1702,
 it was agreed, in conformity to this rule, that the
 right of election was “ in the inhabitants, being
 “ housekeepers, and not receiving alms *within a*
 “ *year;*” and I believe it is the practice in
 general at elections, where the receipt of alms is
 an object of inquiry, to confine that inquiry to
 one year preceding the election. So in the case
 of Taunton, 27th August 1715. The House had
 resolved on a former day, that the right of voting
 was in the potwallers, not receiving alms or cha-
 rity, and the counsel for the petitioners had brought
 evidence to disqualify several voters, who had re-
 ceived the charities called the town charity (vested
 in

in feoffees) and Meredith's charity; the counsel for the sitting members, on this day, brought evidence to disqualify voters for having received charity, particularly Saunders's charity; and, a dispute arising, whether they might examine as to any person who had not received that charity within a year before the election, the House negatived a motion, that they should "be admitted to give evidence of persons having received Saunders's charity before the 2d February 1713, being a year preceding the day of election." Other voters were also impeached, for having received of other charities.

Limitation
of time for
receipt of
alms, &c.

In the Sudbury case it was not disputed, that persons having received parish relief within twelve months, were disqualified to vote; and it became a question, whether such as had received parish relief antecedent to the twelve months preceding the election, and also subsequent to the election, were thereby disqualified from voting. The committee came to no resolution upon the subject, but directed the parties to proceed to shew what kind of relief those persons had received, and under what circumstances it was given. And in the Cricklade committee, in 1785, when the subject of voters receiving alms was under consideration, it was resolved "not to admit evidence to be heard as to the con-

Phillips,
p. 161.

2 Luders,
p. 365.

Limitation
of time for
receipt of
alms, &c.

Pa. 180.

dition of the voters, beyond a year previous
“ to the election.”

In the case of Reading before cited, persons receiving Kendrick's charity, or any other annual charity, distributed in that borough within *two years* then last, had not a right to vote; and by the 11 Geo. I. c. 18. s. 14. no person shall have any right to vote at any election of a citizen or citizens to serve in parliament for the city of London, or of mayor, &c. who has, at any time within the space of two years next before such election, had or received any alms whatsoever, and the vote of every such person shall be void.

Charities not
disabling.

We shall now proceed to examine of what charities a voter may partake, without being disabled from voting; and to this I shall add some cases in which questions of this sort have been agitated, but not determined.

10 Journ.
p. 460.

By-money.

Cirencester, 4th November, 1690.—The petitioner insisted, that the right of election was in all the inhabitants who did not receive alms of the parish. The sitting member insisted, that not only such inhabitants as received alms of the parish, but such also as received any charitable donative given to the poor of this borough, were disqualified. The great question was, whether those who received *By-money* should be allowed to

vote, as to many of whom it appeared that it was received only by their wives. It is a yearly charity, distributed by the churchwardens and overseers, sometimes to one, sometimes to another, by 6*d.* and 1*s.* at a time, to such as do not receive alms of the parish, or pay to the poor. —It did not appear that this class of voters had ever been objected to but once, in King James's time, when the person for whom they had voted was returned, and a petition, which was presented against him, was withdrawn. The committee resolved, that the inhabitants of this borough, receiving a charitable donative, called *By-money*, "have not a right to vote;" to which the House afterwards *disagreed*.

Charities not
disabling.

Hedon, 5th February 1746.—In order to disqualify several voters, it was proved, that they had received a public charity, and that the mayor had threatened to deprive one, if he did not vote for the sitting member.—On the other side, evidence was produced to shew, that this person had voted at former elections, and that persons receiving this charity had always been admitted to vote, without any objection. Two were proposed to be disqualified for having received the sacrament money*; and a motion was

25 Journ.
P. 275.

Sacrament
money.

* In the case of the Attorney-General against Grant, 1 P. Will. Rector of St. Dunstan's, it was argued, that as to the charity money p. 671.

Charities not
disabling.

was made, and the question put, in general terms, "that the receiving of sacrament money does disqualify persons to vote in elections of members to serve in parliament;" and it passed in the negative, *nem. con.*

Journ. vol.
10. p. 376.

The last determination as to Bedford, 12th April 1690, is, that the right of election of burgeses to serve in parliament for the borough of Bedford, is in the burgeses, freemen, and inhabitants, being householders of Bedford, *not receiving alms*. In this case it became material to discuss the difference between *alms* and *charity*. King Edward the VIth, by letters patent, dated 15th August 1552, gave licence to the mayor, &c. of Bedford to erect a free school, and gave them licence to acquire lands, &c. to the clear yearly value of 40*l.* for sustentation of the master and usher, for the marriage of poor maids of the said town, for poor children there to be nourished and informed, and "*the surplusage coming or remaining of the premises to distribute in alms to the poor of the said town for the time being.*" Sir William Harpur did thereupon,

Harpur's
charity.

money given at sacraments, the parson was not bound to distribute it within the parish, but might bestow it on any object of charity. Parker, Lord Chancellor, said, "I will not now determine this; though surely, if equal objects of charity are to be found within the parish, they in reason ought to be preferred."

in

in 1566, grant houses and lands in Bedford, and land in the parish of St. Andrew, Holborn, in the county of Middlesex, to the mayor, &c. of Bedford, for the purposes mentioned in the said letters patent. The estate in Middlesex having been built upon, and increased to a very great value, an act of parliament was obtained to regulate the management and appropriation of the revenues, whereby, after providing for the other purposes above-mentioned, it was enacted, "that
 " the surplufage of the rents and profits shall be
 " distributed *in alms* to the poor of the said town,
 " for the relief and support of poor decayed
 " housekeepers, and other proper objects*."—
 It appeared in evidence, that this charity had been generally distributed among the middling sort of people, and to many persons who paid to church and poor, without solicitation on their part, and was distinguished from the parish pay by the name of *Hall Money*. It was proved, that persons partaking of this charity had voted at all former elections, and their right had never before been called in question. After the point had

Charities not
disabling.

* In the bill, as originally brought in, was this proviso, Journals, vol.
 " that no freemen or inhabitants of the said town of Bed- 10. p. 96.
 " ford, receiving benefit from the said charity estate, in any
 " manner whatever, shall thereby be disqualified from
 " voting for members of parliament for the said town of
 " Bedford." But it was left out at the third reading.

been

Charities not
disabling.

2 Dougl.
p. 110.

been argued, the committee resolved, that persons receiving Sir William Harpur's charity are not thereby disqualified, within the meaning of the determination of 12th April 1690, from voting for members of parliament for Bedford.

This case of the Harpur charity may appear, like some others in this class, to be irreconcilable with the former cases; for it is expressly given "to be distributed *in alms to the poor* of the "said town;" and the receipt of its donations, from the words of the grant, and the description of the objects of its bounty, seems to be a proof of their poverty, as much as if they had actually received parish relief. But the committee may have taken this distinction, that, being generally distributed among substantial people (though contrary to the words of the grant) that inference was rebutted by the practice, and therefore, that it did not disqualify. If the resolution of this committee was not founded upon distinction, it will be difficult to assign any principle on which, consistently with their other resolutions, it can be supported. For they could not have decided in favour of these voters, merely because they had been admitted at former elections; because those who had received Welborn's charity had been always allowed to vote, and yet were determined to be disqualified. It could not be, because the benefaction came out of a fund
already

already existing, and which *must* necessarily be applied to charitable uses; for Welborn's charity arose also out of such a fund. It could not be, because the distribution of this charity was vested in the corporation of Bedford, and not in the parish officers; for persons who partook of Hawes's charity, which will be mentioned presently, and was distributed by the churchwardens and overseers of the poor, were confirmed in their right to vote.

Charities not
disabling.

Lands were left by one Hawes, for the use of the poor of the parishes of St. Mary and St. Paul, in Bedford; two thirds of the yearly profits are to be distributed yearly, *in bread*, to the poor of the parish of St. Paul, and one third to the poor of the parish of St. Mary. It was proved, that the usage and reputation were in favour of persons receiving this charity voting at the elections of members of parliament, and that they were often rated to the poor, and that the bread was mostly received by the wives and children. The question being put in the committee, that the persons who voted at the last election for Bedford, having received Hawes's charity, were thereby disqualified, it was resolved in the negative.

2 Dougl.
P. 113.

Hawes's
charity.

Ib. p. 122.

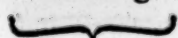
In the case of Sudbury, it appeared that Martin Cole, by his will, dated the 29th September 1620, devised 14*l.* *per annum*, issuing out of land, to trustees, to purchase canvas, to be made up into shirts and shifts, and then to be delivered

Phillips,
P. 148.

Cole's
charity.

to

Charities not
disabling.



to the ministers, churchwardens, and overseers of the poor, and to be by them given to twenty-five poor men, and twenty-five poor women, of Sudbury. Nathaniel King, by his will, dated 15th April 1668, devised 50s. to purchase one hundred loaves of bread; a loaf to be given to each person who received a shirt or shift. A list is made out, by the trustees, of those who are to receive these articles; and the ministers, churchwardens, and overseers, have nothing to do with the relief of the parish poor, for they are under the regulation of a workhouse corporation, established at Sudbury, before the 43 Eliz. by act of parliament. Under these circumstances the committee resolved, "that the freemen of Sudbury, having received the donations under the wills of Nathaniel King and Martin Cole, are not thereby disqualified from giving their votes for members to sit in parliament."

Phillips,
p. 160.

Gloucester,
p. 180. 178.

In the Gloucestershire committee it was resolved, *nem. con.* that William Virgo, having, within twelve months before the election, received part of a sum, given by will to the parish of Thornbury, who are not on the parish books, and received no monthly pay, was not thereby disqualified.

1 Luders,
p. 193.

Downton. It should be observed, that this is a burgage tenure borough. Two voters were objected to as paupers; one, because he had received

ceived parish and other charitable relief; the other, because he had partaken of Stockman's charity. The former was rejected upon other objections. The case of the latter was as follows: in 1626, one William Stockman, by a deed of feoffment, gave certain lands to feoffees, for the uses and trusts named in a schedule, making part of the deed. One item of this schedule is, "that the rents shall be distributed yearly among such poor craftsmen, and poor labourers, as shall be surcharged by children, within the said parish, and for their relief, as shall seem best to the feoffees, with the consent of the vicar or curate of the parish, and not to go or be employed to the increase of the church box of the said parish." By another item, it is directed, "that this provision shall not be accounted any abatement of the collection for the church-box, or any other relief of the poor, usually provided for the poor of the parish." These words have been ever understood by the feoffees to direct, that this charity shall not be given to those who receive parish relief; and the present feoffees, it was proved, never give it to any such. It is a temporary relief; and the custom is to distribute it annually, in different sums of money, to those whom the trustees think in want of it. The voter had received it for three years, and within a year before

Charities not
disabling.Stockman's
charity.

Ib. p. 195.

Charities not the election. His vote was admitted by the
disabling. committee.

Sir T. White
and Sir T.
Wheatley's
gifts, p. 177.

In the case of Coventry, 1st March 1708, we have seen that the receipt of Sir Thomas White's gift, and Sir Thomas Wheatley's gift, were held not to disable voters.

1 Dougl.
P. 373.

Chelsea and
Greenwich
Hospital Pen-
sioners.

I have reserved for this place (for a reason which will appear presently) the case of Chelsea and Greenwich hospital pensioners, and of St. John's hospital, at Bedford. In the Taunton case, the select committee resolved, that Chelsea hospital pensioners were not disqualified, within the meaning either of the words " alms," or " charity." There seems no reasonable ground of distinction between them and the pensioners of Greenwich hospital; and in arguing the Bedford case, they were treated as upon the same footing.

2 Dougl.
P. 116.

2 Dougl.
P. 114.

St. John's
Hospital, at
Bedford.

St. John's Hospital, at Bedford, was founded in the year 980, by one Robert de Parys, for six poor men to pray for his soul, and the souls of several of his relations, and to attend divine service, which was a sort of charity, and is now a regular corporation. The rector of the parish being master, and the brethren, who, as well as the master, receive 9*d.* a week from its revenues, were held by the committee not to be disqualified. It appeared, that the reputation and usage was in favour of receiving their votes, and that they

Ib. p. 123.

they are often rated to the poor. These voters do not fall within the general idea of receiving "alms," or "charity." The brethren of St. John's hospital are a corporation, and have a permanent interest in what they receive from the profits of their own land; it is of a certain and durable nature; and, instead of their being in a state of indigence, the very receipt of this money is conclusive proof that they are not so. The latter observation applies to Chelsea and Greenwich hospital pensioners; their pensions are received, not as a relief for their poverty, but a reward for their services.

Charities not
disabling.

The following cases, in which the receipt of charities has been made an objection to voters, but upon which no resolutions were made, will shew the very unsettled state of this branch of the law, even at this day.

Charities
disputed.

Bishop's-Castle, 4th February, 1699.—Mr. Turner's charity was 6*l.* a year, given 50*s.* to Bishop's-Castle, 50*s.* to Montgomery, to be disposed of to the poor annually, on the 2d of June, and 20*s.* for a sermon; it was generally given to widows; but had been given for many years to the wives of nine of the burgesses of this borough, who had voted for the petitioners. For this reason their votes were objected to as almsmen. They were rated to church and poor, had not

13 Journ.
P. 171.

Turner's
charity.

Q

parish

Charities
disputed.

parish pay, and the receiving of this charity had never been made an objection before. It was endeavoured to be shewn, that voters for the sitting member had received the same charity; but it was not proved that any of them had received it within a year before the election. No resolution of the committee, or of the House appears as to this charity; but the petitioner was resolved to be duly elected.

18 Journ.
p. 63.

Reeves's
charity.

New Windsor, 14th April, 1715, where the right was agreed to be in the inhabitants paying scot and lot, two were objected to for receiving Mr. Reeves's charity, which is a twelvepenny loaf, distributed to poor people, &c.

25 Journ.
p. 571. &c.

Smith's
charity.

Westbury, 16th March, 1747.—The right of election had been determined, in 1715, to be vested in every tenant of any burgage tenement, in fee, for life, or ninety-nine years, determinable on lives, or by copy of court roll, paying a burgage rent of 4*d.* or 2*d.* yearly, being resident within the borough, and not receiving alms.—And now, in 1747, two voters were objected to as having received charity. They had received linen, distributed by the minister, churchwardens, and overseers annually, by the charitable bequest of a Mr. Smith. It was usually distributed to the necessitous poor, next to those who received relief from the parish. In support of these votes it was argued, that their right of voting accrued
after

after* they had received this charity, so could not have been affected by it; and that this was not such a charity as excluded them from voting, and cited the case of Cirencester, in 1690, as similar. It was further said, that there is a distinction between alms and charity; and that where the House has adjudged charities to disqualify, the word charity has been used, as well as alms, in the resolution; as in the cases of Abingdon, in 1708, and Coventry, in 1711.—On the other side it was urged, that this charity, being distributed by the parish officers to such persons as would otherwise become chargeable, ought to be considered as alms; and cited the cases of Abingdon, in 1689, Aylesbury, in 1698, and Reading, in 1708. It does not appear what effect this objection had upon the election, and the committee came to no resolution upon it.

Charities
disputed.

Pa. 184.

Pa. 179. 178.

Pa. 176. 179.

Pa. 180.

Haslemere, 1774.—In the reign of Charles the First, one Henry Smith devised all his estates, real and personal, to be distributed, from time to time, among a great many different parishes, particularly to all those in Surry but

2 Dougl.

P. 330, &c.

Hen. Smith's
charity.

* For, voting in right of burgage tenements, their conveyances had been made only a few days before the election, that there might be a colourable residence.

Charities
doubtful

three, for the setting of the *poor* to work, for the binding poor apprentices, and teaching and educating poor children. The rents of this donation amount to about 1600*l.* a year. In most of the parishes, their shares are paid to the overseers of the poor; and it is understood by the trustees that the money is to be distributed to such poor parishioners as do not receive the ordinary parish relief; and the overseers make a return to the trustees of the persons who have received the charity. It was contended, that though *alms* are not mentioned in the last determination of the right of election of Haslemere, they must be considered as working a disqualification by the common law of parliament, exactly as if they had been expressly mentioned; and that this charity was in the nature of alms, or parish relief, being substituted instead thereof to those who are objects of parochial assistance, and distributed by the same persons. The witnesses never heard that this charity was considered in the borough as a disqualification, but they did not remember an instance of any person who had received it ever offering to poll. The committee determined the merits of the election without coming to any resolution as to the right of the persons, six in number, who had received this charity, and had claimed to vote.

6. Certain

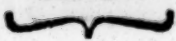
6. Certain revenue officers are presumed to be so much under the controul of their superiors, or the crown, that they cannot give a free suffrage, or exercise any judgment in the choice of representatives. Therefore, to guard the palladium of the British constitution, the freedom of election, from violation, the act of the 22 Geo. III. c. 41. provides, that “ from and after the first day of August,

Revenue
officers.

“ one thousand seven hundred and eighty-two,
“ no commissioner, collector, supervisor, gauger,
“ or other officer or person whatsoever, concerned
“ or employed in the charging, collecting, levy-
“ ing, or managing the duties of excise, or any
“ branch or part thereof; nor any commissioner,
“ collector, comptroller, searcher, or other of-
“ ficer or person whatsoever, concerned or em-
“ ployed in the charging, collecting, levying, or
“ managing the customs, or any branch or part
“ thereof; nor any commissioner, officer, or other
“ person, concerned or employed in collecting,
“ receiving, or managing, any of the duties on
“ stamped vellum, parchment, and paper; nor
“ any person appointed by the commissioners for
“ distributing stamps; nor any commissioner,
“ officer, or other person, employed in collect-
“ ing, levying, or managing, any of the duties
“ on salt; nor any surveyor, collector, comp-
“ troller, inspector, officer, or other person, em-

No commis-
sioner or of-
ficer employ-
ed in collect-
ing or ma-
naging the
duties of ex-
cise, customs,
&c. shall have
any vote in
the election
of members
of parlia-
ment.

Revenue
officers.



“ ployed in collecting or managing the revenue
“ of the windows or houses; nor any postmaster,
“ postmasters general, or his or their deputy or
“ deputies, or any person employed by or under
“ him or them, in receiving, collecting, or
“ managing the revenue of the post-office, or
“ any part thereof; nor any captain, master, or
“ mate, of any ship, packet, or other vessel, em-
“ ployed by or under the postmaster or post-
“ masters general, in conveying the mail to and
“ from foreign parts, shall be capable of giving
“ his vote for the election of any knight of the
“ shire, commissioner, citizen, burgess, or baron,
“ to serve in parliament for any county, stewart-
“ ry, city, borough, or cinque port, or for
“ chusing any delegate in whom the right of
“ electing members to serve in parliament for
“ that part of Great-Britain called Scotland is
“ vested: and if any person, hereby made in-
“ capable of voting as aforesaid, shall neverthe-
“ less presume to give his vote, during the time
“ he shall hold, or within twelve calendar
“ months after he shall cease to hold or execute
“ any of the offices aforesaid, contrary to the
“ true intent and meaning of this act, such votes
“ so given shall be held null and void to all in-
“ tents and purposes whatsoever, and every per-
“ son so offending shall forfeit the sum of one
“ hundred pounds, one moiety thereof to the
“ informer,

“ informer, and the other moiety thereof to be
 “ immediately paid into the hands of the trea-
 “ surer of the county, riding, or division, within
 “ which such offence shall have been committed,
 “ in that part of Great Britain called England,
 “ and into the hands of the clerk of the justice
 “ of the peace of the counties or stewartries, in
 “ that part of Great Britain called Scotland, to
 “ be applied and disposed of to such purposes as
 “ the justices, at the next general quarter session
 “ of the peace to be held for such county, stew-
 “ artry, riding, or division, shall think fit, to be
 “ recovered by any person that shall sue for the
 “ same, by action of debt, bill, plaint, or infor-
 “ mation, in any of his Majesty’s courts of
 “ record at Westminster, in which no essoin,
 “ protection, privilege, or wager of law, or more
 “ than one imparlance, shall be allowed, or by
 “ summary complaint before the court of session
 “ in Scotland, and the person convicted on any
 “ such suit shall thereby become disabled and
 “ incapable of ever bearing or executing any
 “ office or place of trust whatsoever, under his
 “ Majesty, his heirs or successors.

Revenue
officers.

2dly. “ Provided always, and be it enacted, Not to extend
 “ that nothing in this act contained shall extend, to commis-
 “ or be construed to extend, to any person or sioners of the
 “ persons, for or by reason of his or their being land-tax, or
 “ a commissioner or commissioners of the land- persons act-
 ing under
 them.

Revenue
officers.

“ tax, or for or by reason of his or their acting
“ by or under the appointment of such commis-
“ sioners of the land-tax, for the purpose of
“ assessing, levying, collecting, receiving, or
“ managing the land-tax, or any other rates or
“ duties already granted or imposed, or which
“ shall hereafter be granted or imposed, by au-
“ thority of parliament.

Not to offices
of inherit-
ance.

3dly. “ Provided also, and be it further en-
“ acted, that nothing in this act contained shall
“ extend, or be construed to extend, to any
“ office now held, or usually granted to be held,
“ by letter patent, for any estate of inheritance
“ or freehold.

Not to per-
sons who shall
resign before
August 1782.

4thly. “ Provided always, and be it enacted,
“ by the authority aforesaid, that nothing here-
“ in contained shall extend to any person who
“ shall resign his office or employment on or
“ before the first day of August, one thousand
“ seven hundred and eighty-two.

Limitation
of actions.

5thly. “ Provided also, and be it enacted,
“ that no person shall be liable to any forfeiture
“ or penalty, by this act laid or imposed, un-
“ less prosecution be commenced within twelve
“ months after such penalty or forfeiture shall
“ be incurred.”

2 Luders,
p. 541, &c.

Thomas Barringer was objected to as being a
collector of the duties on houses and windows, ap-
pointed by virtue of the 20 Geo. II. c. 3.

By

By the 6th section of that act, the commissioners of the land-tax are made commissioners also for levying the taxes upon houses and windows; they are to appoint assessors for the different places in their respective counties; and the act requires, that on an appointed day the assessors shall return the names of two or more able and sufficient persons, within the bounds or limits where they shall be assessors respectively, to be *collectors* of the several rates and duties granted by that act; for whose paying to the receiver general such money as they shall be charged withal, the parish or place by which they are so employed, shall be answerable. Sect. 7. points out the specific duty of the collectors; and sect. 9. inflicts penalties upon their not collecting, and paying over the money collected, according to the directions of the act. The material parts of the 20 Geo. II. c. 3. are re-enacted in the subsequent acts, by which the duties on houses and windows have been continued or extended.

The committee resolved, " that the voter was
" not disqualified." And the following motion
was negatived, " That any collectors or assess-
" fors, appointed by or acting under the com-
" missioners of the land-tax, whether acting as
" such, or as commissioners for the management
" of the duties on houses and windows, or for
" the management of any other rates or duties
" imposed

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officers.Collector of
duties on
houses, &c.

Revenue
officers.

“ imposed or to be imposed by parliament, are
“ disqualified from voting at elections of mem-
“ bers to serve in parliament.”

2 Luders,
p. 552.

The same objection was made, and had a similar determination, in the Buckinghamshire committee.

Ibid.

Sub-distribu-
tor of stamps.

John Arch had been appointed, by the distributor of stamps, a *sub-distributor* for the district of Stafford. The nature of the appointment appeared to be, that the distributor has the power of appointing his assistants in the distribution, by the direction of the commissioners, to whom he makes an annual return of their names. The distributor is answerable for all the money received by the sub-distributors, and the commissioners have no immediate power or controul over them; but if they were to disapprove of any person so appointed, the distributor would remove him. The sub-distributor is allowed 2*l.* 10*s.* *per cent.* on the money he collects, which the distributor allows out of the five *per cent.* allowed by government for collecting. The sub-distributors make out licences for carts, waggon, and horses, and sign them with their own name. The vote was held good. The same objection was made in the Buckinghamshire case, and received the same determination. It was also argued in the Cricklade case, but was not determined there.

Ib. p. 557.

Ib. p. 538.
Husband of
post-mistress.

The Reverend John Hempstead was objected to, as the husband of the post-mistress of Newmarket.

market. She had been regularly appointed in 1778, married the voter in 1781, and still held the office. His vote was rejected.

Revenue
Officers.

Thomas Godfrey Burr was objected to as postmaster of Luton. The voter was a brewer, and one Smith, an inn-keeper, rented his house and some land from him. Burr was regularly appointed. The post-office carried on its correspondence in his name, but Smith executed the office of postmaster, and, by agreement with Burr, received the salary to his own use. His vote was disallowed.

2 Luders,
p. 561.
Postmaster.

James Wilson was appointed by the postmaster at Luton a sub-deputy, to distribute the letters and receive the postage in the parish of Barton, within his district, not a post town; he received a penny a mile upon each letter, above the regular postage. These sub-deputies are appointed, not by the postmaster general, but with his approbation. This vote was held good.

Ib. p. 562.
Sub-deputies
in the post-
office.

By the 27 Geo. III. c. 26. s. 15. no persons farming the duties on horses let to hire for travelling post, or by time, and appointed collectors thereof, shall, in pursuance of such appointment, be disqualified from voting at any election of members to serve in parliament.

III. There is another class of persons, who may be possessed of freehold estates, but whose right to vote at elections has been disputed, either

on account of their political rank or situation, or their concern in the election itself, such are peers; clergymen; sheriffs, as returning officers; and candidates.

Peers.

13 Journ.
p. 64.

24 Journ.
p. 23. 103.

1. When the members of the House of Peers were first excluded from voting at the elections of members of parliament, does not exactly appear. The returns preserved by Prynne shew, that in the earlier periods of our history they exercised that privilege; and even after their personal attendance at the county court had fallen into disuse, we find instances in which their attorneys returned the knights of the shire. On the 14th December 1699, however, in consequence of the Earl of Manchester having voted at an election for Malden, the House of Commons resolved, *nem. con.* "that no peer of this kingdom hath any right to give his vote at the election for any member to serve in parliament;" and this resolution is repeated at the beginning of every session, but has never been recognized by the House of Peers. In the case of the Scotch boroughs of Dornoch, &c. 15 December 1741, five delegates voted, three for the lord advocate, two for the petitioner; but one of the three delegates who voted for the lord advocate was unduly elected, and another was a Scotch peer, Lord Cromartie; both of these votes were objected to, the House thought the objections well founded, and resolved that the petitioner was duly elected.

2. All

2. All doubts as to the right of the clergy to vote at the election of knights of the shire, are now removed, not only by long usage in their favour, but by divers acts of parliament, as has been observed before. Formerly, however, when they were separately represented, and taxed in convocation, it is not probable that they inter-meddled in the elections of laymen. In the case of Gatton, 3 November 1641, the vote of the parson of the parish, *who could not sit if he was chosen*, was queried upon the poll, and disputed before the committee; but it was not necessary for them to come to any decision upon his right. And the vote of the parson of the same parish was again queried, for the same reason, 15 December 1696.

Clergy.

Pa. 73.

Pa. 173.

10 Journ.
p. 626.

3. I know of no objection to the sheriff's giving his vote as a freeholder at a county election. He is in the situation of every other returning officer, and it is a very common thing for returning officers to vote at the elections of citizens or burgessees. In the case of Arundel, 22 February 1693, the poll, upon which the sitting member was returned, was equal, and the mayor gave the casting vote in his favour, without any objection being taken, although the right of election was disputed. Here, though it is called the *casting vote*, it is to be taken, that he voted only once. In the case of Tregony, 5 March 1695,

Sheriff.

Ib. p. 102.

Ib. p. 492.

Sheriff.
 16 Journ.
 P. 51. 58.

1695, the petitioners insisted that the mayor should not have voted; but the opinion of the committee does not appear. In the subsequent case of Harwich, 13th January 1708, it was held, that the returning officer has a right to vote, though a casting voice is not called for. There was a double return. The petition stated, that the petitioner had sixteen votes, and Mr. E. only fifteen, but that the mayor "pretended to vote for him, and thereby to make an equality," whereas he ought not to vote but where the numbers are equal. The House determined that neither of the candidates were duly returned, but, on account of this equality of votes, occasioned by the mayor's having voted, resolved that it was a void election, and a new writ issued. But the returning officer has no right to vote *twice* at an election; he cannot vote to make the numbers equal, and then give a casting voice. In what cases he has a casting voice will be considered hereafter.

Candidates.

Brev. parl.
 red. p. 137.

4. A candidate, who is in other respects qualified to vote at the election, is not deprived of the exercise of his franchise. He may vote for any other candidate, but, what is a little extraordinary, he may vote *for himself*. In the very ancient returns, Prynne tells us, that the members chosen did sometimes, but rarely, seal the indentures of their own returns, and so gave voices for themselves; and

and an instance of this kind occurs in the return of members for the county of Northumberland, in the 28th year of Henry the 6th.—In the case of Hastings, 20th January 1698, one of the candidates voted for himself, and it was said, that Mr. Conyers had done so for East Grinstead.—East Retford, 17th March 1701, the sitting members voted for each other, and one of the petitioners voted for himself.—In 1702 the votes of the sitting members, voting for themselves and each for the other, were excepted to.—Wilton, 17th March 1710, one of the sitting members voted for himself, and no objection was made on that account, though his vote was disputed on another ground.—Old Sarum, 11th Dec. 1705, Lord Grandison and Mr. Mompeyson had each an equality of votes, viz. five each, but the latter had voted for himself, to make up his number. It does not appear he was objected to; and, after the merits of the election had been gone into, he was declared duly elected.—Inverness, &c. 22d Nov. 1768, the sitting member, as commissioner of Fortrose, voted for himself, and, the votes being even, gave the casting vote, as præses, for himself, and was returned. On this, and other grounds, he was petitioned against, but the petitions were afterwards withdrawn.—At the last election for the county of Middlesex, Mr. Byng and Mr. Wilkes each voted for himself; and Mr. Mainwaring voted for Mr. Wilkes.

Candidates

Brev. parl.
red. p. 168.12 Journ. p.
445.13 Journ.
p. 804.14 Journ. p.
50.16 Journ. p.
559.15 Journ. p.
60.32 Journ. p.
50.

IV. We

IV. We shall now consider how far the votes of freeholders may be affected by the imputation of crimes, and herein of sectaries in general—quakers—papists—Jews—outlaws—persons excommunicated—felons—persons convicted of perjury, or subornation of perjury—persons convicted of bribery—and smugglers.

Sectaries.

¹ Keb. p.
777.

¹ L. Raym.
p. 337.
² Stra. p.
828.

1. By the law of England, before the act of toleration was passed, non-conformity to the doctrines and discipline of the church of England was punished as a crime, and, even at this day, sectaries of all denominations labour under divers political disabilities and penal restrictions. It was formerly doubted, whether a common freeman of a borough, where the right of voting at the election of members of Parliament is in the freemen, did not enjoy such an office under government as made it necessary for him to receive the Sacrament of the Lord's Supper, according to the rites of the church of England, as required by the Corporation Act, and Test Act, to entitle him to vote at the elections of members, or to do any other act as a freeman. It is now settled, that such freeman is not bound to qualify within those laws, for he is said not to enjoy *a place or office*, but simply *a privilege*. In like manner, the right of voting at the election of knights of the shire is a *privilege* attached to freehold

freehold estates upon certain conditions, and therefore freeholders of all religious sects, complying with those conditions, and taking the oaths and making the declarations required at the time of polling, have, neither before nor since the act of toleration, met with any interruption in the enjoyment of this privilege.

Sectaries.

2. During the troubles in the last century, a new set of protestant dissenters sprung up, who have since been distinguished by the denomination of quakers. One of their peculiar tenets is, that it is sinful to take an oath, and of course, so long as freeholders could not poll without taking certain oaths, they were excluded from voting. After the Restoration, sectaries of all denominations were punished as offenders against the state, and scruples of conscience, as crimes of a heinous nature. The quakers were persecuted with greater zeal and virulence than any other sect, during the tyrannical reign of Charles the II^d, therefore it is not likely that they would, by tendering their votes in that reign, purposely throw themselves in the way of their persecutors, or court the vengeance of their enemies; besides, by the statute of 3 Hen. VI. the sheriff had power to examine every freeholder *upon oath* how much he might expend by the

Quakers.

P

year,

Quakers.

year, and, on their refusal to take the oath, had it always in his power to set them aside.

After the Revolution a more liberal and manly spirit prevailed, and the writings of the great Locke dissipated much of the cloud of prejudice and bigotry, which had so long disgraced this country. William the III^d, at that glorious æra, endeavoured to persuade the people, whose liberties he had restored, that to differ in religious opinions from the Established Church was not a crime; but even he, to whom, though a native of another country, and educated in a foreign church, this country and its established church had owed so much, was unable to overcome the inveterate prejudices, and groundless fears of his subjects, or to obtain more towards the introduction of a full and free toleration, than the statute 1 W. & M. c. 18. commonly called the Toleration act. By that act, some dissenters from the establishment are exempted from penalties, upon taking certain oaths, and making a declaration according to a specified form; and dissenters, who scruple to take an oath, are protected by the act, upon making and subscribing the abovementioned declaration, and also the declaration of fidelity as required there; but the quakers were still excluded from voting at elections, by the other oaths which might be required at the poll. Afterwards, when the 7 & 8 W. III. c. 27. s. 19. had enacted,
that

that no quakers, who should refuse to subscribe the declaration of fidelity abovementioned (which was given in lieu of the oaths of allegiance and supremacy) should be admitted to vote at any election of members to serve in parliament, and so removed one of the obstacles to their voting, the difficulty, as to taking the oath, which the sheriff had power to administer to every voter to ascertain the value of his freehold, still remained.

Quakers.

In the case of the county of Hertford, 30th April 1690, the fate of the election depended upon the admission of the votes of seventy-three quakers.—The counsel offered to prove them all freeholders; but, being ordered to withdraw, the committee resolved, that quakers, having freeholds, but refusing to take the oath, when tendered by the sheriff, are incapable of giving votes for knights of the shire. It is impossible to dispute, that this resolution, as the law then stood, was perfectly warranted; yet such was the liberal spirit of the House of Commons, and so strong the wish to favour this body of freeholders, that it was not agreed to without a division, (197 to 122); and afterwards, 22d February 1695, in the case of the county of Brecknock, by agreement between the candidates, the votes of quakers were admitted on both

10 Journ.
P. 396.

11 Journ.
P. 463.

Quakers.

11 Journ.
p. 103.

fides. But it should seem that quakers had been used to give their votes at borough elections, for in the case of Arundel, 22d February 1693, it was proved that quakers (as inhabitants, householders, paying scot and lot) had a right to vote, if rated. This last obstacle to their voting at county elections, was removed in the same year, by the statute of 7 & 8 W. 3. c. 34. whereby, in any case where by law an oath is required, a quaker shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration in this form: "I A. B. do declare, in the presence of " Almighty God, the witness of the truth of " what I say, &c." And a person wilfully, falsely, and corruptly affirming, is liable to the same punishment as persons guilty of wilful and corrupt perjury.

The 6 Ann. c. 23. s. 13. which gives power to any candidate, or *other person* present at an election, to require the sheriff to administer the oath of abjuration to the voters who come to poll, gives the returning officer authority to take the affirmation of a quaker in lieu of it.

In the paroxysm of party violence, which disturbed every part of the kingdom during the four last years of the reign of Queen Anne, and some of the years immediately succeeding the accession of George the first, the quakers were not permitted to avail themselves at all elections of the protection of the

the legislature. Thus, in the case of Wiltshire, 6th March 1713, the petition complained, that “ the under-sheriff ordered the oath of abjuration to be given to none but the quakers, the majority of whom would have voted for the petitioners.” And, in the case of Bridport, 31st March 1715, above twenty quakers; and in that of Pontefract, 22d March 1715, three quakers were not allowed to vote, because they refused to take the abjuration oath, though they offered to make the solemn affirmation to the effect thereof. In the case of Southwark, May 25th 1714, one point was touching the affirmation, which was administered to the people called quakers at that election, instead of the oath of abjuration; the form of the affirmation does not appear, but a motion being made, and the question being put, “ that the quakers, who made their solemn affirmation in the form tendered to them, instead of the oath of abjuration, by the bailiff of the borough of Southwark, upon the late election, had a right to vote in the said election,” it passed in the negative: and afterwards, 25th June, the sitting members having endeavoured to establish the votes of one William Thomson and several quakers, it was resolved by the house, “ that William Thomson, by taking the solemn affirmation in the form tendered to him, instead of the oath of

Quakers.

17 Journ.
p. 489.18 Journ. p.
39. 409.17 Journ. p.
642.

Ib. p. 702.

Quakers.

abjuration, had a right to vote in the "late election of members to serve in parliament for the borough of Southwark." If the form of the affirmation tendered on this occasion, was not to the effect of the oath of abjuration, these resolutions are clearly right; but if it was to that effect, as one may be led to suspect from the silence of the resolutions upon the subject, and the strong spirit of party then prevalent in the House, they were as clearly wrong.

Nonjurors.

The indulgence given to quakers, by permitting them to subscribe the declaration of fidelity, instead of taking the oaths of allegiance and supremacy, is not to be extended to persons of any other description. Thus at Wallingford,

17 Journ.
P. 243.

15 December 1709, the name of one Thomas Parsons was entered specially on the poll; he was entered as a nonjuror; a witness said he was a conscientious man, but would not take any oath, but offered to subscribe the declaration, though he could not say that he was one of the

Moravians.

people called quakers. But the Moravians, who also scruple to take an oath, are permitted, by the 22 Geo. II. c. 30. to affirm, in all cases where an oath is required by law, in the same form as the Quakers.

Papists.

3. By the law of England, persons of the Roman catholic persuasion are liable to very

§

severe

severe penalties for professing their religion, whenever any hot-headed zealot may think fit to inflict them. The statutes enacted against their religion, however severe and sanguinary in other respects, allow them, under certain restrictions, to hold landed estates; and they would therefore be entitled to vote as freeholders at the election of knights of the shire, if the sheriff was not obliged, when called upon, to tender the oaths of abjuration, &c. which, containing clauses repugnant to the religion they profess, they cannot take. Sometimes, indeed, the sheriff may not be required to administer the oaths, and their votes may be received on the poll; but, in general, it is the interest of one side or other to exclude them; and in this manner they are almost always prevented from exercising this franchise.

In the Bedfordshire case it was objected, that a voter was a papist, but he had taken all the oaths required at the poll. It was contended, in support of his vote, that the oath of abjuration might have been also tendered when he polled, which was the only trial of his religion that could be made, and that only *at that time*. The committee seemed of that mind, and the objection was abandoned. 2 Luders,
p. 567.

Every popish recusant convict shall, by the statute of the 3 Jac. c. 5. s. 11. stand, and be

Papists.

Pa. 173.

reputed to be, to all intents and purposes, disabled, as a person lawfully and duly excommunicated according to the laws of this realm, until he shall conform, &c. Of the disabilities of excommunicated persons, we shall treat more fully hereafter; but it has never been determined whether a popish recusant convict is, as such, disabled from voting at the election of members of parliament. In the case of Gatton, 3 November 1641, the point came before the committee, but was not determined.

Jews:

Molloy, L. 3.
c. 6. f. 12.

4. The Jews were settled in England, in considerable numbers, before the time of William the Conqueror, and he increased them, by bringing a colony from Rouen, in Normandy. The terms on which he and his successors allowed them to remain in this country were extremely severe and tyrannical. They were in the situation of villeins to the King, who might wrest from them their property when he thought fit; they were obliged to live in the places assigned them, and could not remove without special licence.—Continually harrassed and oppressed by the crown, they were treated with scorn and cruelty by their fellow subjects, who rejoiced at their sufferings. It appears that an immense revenue was raised out of the oppressions of this devoted people; for in about seven years, from the 17th
December,

December, in the 50th year of Hen. III. until the Tuesday in Shrovetide, in the 2d year of Edw. Ist, they had actually paid to the crown 420,000*l.* 15*s.* 4*d.*!—In the 18 Edw. I. 1290, all usury (i. e. lending of money at interest) was prohibited by an act of parliament; and, in consequence of that act, Sir Edward Coke tells us, that the Jews, to the number of 15,060, withdrew themselves from the kingdom; while other authors assert, that they were banished by the King. This however is clear, that the King appointed a day for their departure, and gave them letters of safe conduct, directed to the sheriffs of counties, to protect them in travelling towards London, to embark.

Jews.
2 Inst. p. 506.

The Jews remained in this state of exile until the time of the Protectorate; when, after various negotiations with Cromwell, they were permitted to settle again in this country. The toleration they enjoy is not secured to them by any law, the toleration act being expressly confined to those who do not deny the Trinity in their preaching or writing; but there seems to be no distinction between Jews, who are the natural-born subjects of this realm, or have been naturalized, and dissenting protestants, who, like them, from denying the doctrine of the Trinity, have not the protection of the toleration act. It has been asserted, particularly in the debates on the

Jews.

the bill for enabling Jews to be naturalized, in 1753, that Jews are incapable of holding lands; and for this an act of parliament, supposed to have been made in the 54th year of Henry the III^d, has been cited; but there is good ground for doubting that such a statute ever existed. Indeed, long before, and at the time of their banishment, there is indisputable evidence that they did in fact enjoy real estates; and Edward the Ist, after their departure, actually seized their houses and lands, and granted them out to his subjects. Since their return, they have been possessed of real estates, without molestation; and, notwithstanding the doubts thrown out in both Houses of Parliament, in 1753, may, I conceive, vote at county elections, upon taking the oaths according to the ceremonies of their own religion, as they are always permitted to do, when sworn in the courts of justice.

Outlaws.

5. An outlaw is one deprived of the benefit of the law, and the King's protection, for contemptuously refusing to be amenable to some court of competent authority, which called him before them. After the outlawry has appeared on record, which is not till the writ of exigent is returned, he is no longer *liber*, & *legalis homo*, and is deprived of most of his municipal rights.

Co. Litt.
p. 128. b.

His

His goods and chattels are forfeited to the King; and, if he is outlawed in a criminal case, his lands also go to the King, or the lord of whom they are holden; if in a civil suit, the issues or profits of his real estate go to the King till his estate in the lands is ended, or the outlawry set aside. After outlawry his estate is no longer vested in him, and it should seem that he loses the franchise of voting annexed to it; besides, he is no longer *liber & legalis homo*; and therefore, it may be said, is excluded on account of the personal incapacity under which he labours. I do not find, however, that there has been any determination of the House of Commons upon the subject; but in the following cases, the votes of persons outlawed have been objected to.—Bridgewater, 10th Dec. 1692, John Webber was objected to, and the outlawry book was produced, whereby it appeared he stood outlawed by mesne process ever since the 2 Jac. II; but it was answered, that the debt was paid, and was pardoned by the general pardon.—Launceston, 17th March 1723. It appeared, by the report of the committee, that James Wakeman was outlawed for debt, 13 Ann. and that the outlawry was not reversed.—And so Hindon, 12th April 1728, a voter was objected to as outlawed in debt in London, 11 Ann.

10 Journ.
P. 738.20 Journ.
P. 299.21 Journ.
P. 132.

Excommu-
nicated per-
sons.

Co. Litt.
p. 133. b.

8 Journ.
p. 118.

Grey's De-
bates, vol. 1.
p. 209.

13 Journ.
p. 42.

6. Excommunication is an ecclesiastical censure, inflicted by the spiritual courts, and the disabilities flowing from it are of a very serious nature. It is divided into two sorts, the greater, and the lesser. The *lesser* is, where a man is deprived of the participation of the sacraments only; the *greater*, *non solum a sacramentorum verum etiam fidelium communione excludit, et ab omni actu legitimo separat & dividit*. Either of them, in general, disables a person from suing in any of the temporal courts of justice, for *excommunicato interdicitur omnis actus legitimus ita quod agere non potest*. In this situation, when a person cannot do any one legal act, it may be argued, that he cannot vote at the election of members of parliament. This point has never received a determination in the House of Commons.—Bridgewater, 7th Dec. 1669, where the right was in the majority of the corporation, the committee reported, that one of the burgesses who voted was under excommunication when he voted, and was not absolved till after the election; and Mr. Swynfen, in the debate upon that case, said, “Excommunication takes away no man’s voice in elections; in a writ, it may abate the writ, if pleaded; but it is not void *ipso facto*, only voidable.” The votes of persons excommunicated have been objected to in several cases; thus Wendover, 22d November 1702, a voter

was

was excepted to as "being an excommunicated person."

7. If persons, who, from weakness of understanding, may not make a proper choice, ought to be excluded from voting at the election of members of parliament, still less ought those, who, from the commission of the most heinous crimes, have shewn themselves devoid of common honesty, to exercise a franchise, which they are ready to abuse to any corrupt or wicked purpose. I do not find, however, any resolution, that persons convicted even of felony are disabled from voting, till the case of Sudbury. There the committee held, that (the right of election being in the freemen) electors convicted and attainted of felony were disqualified to vote; and resolved, "that the book, entitled the Sudbury Quarter Sessions, containing minutes of such quarter sessions, be admitted in evidence to prove the conviction of felony." The courts of justice, in general, admit of no evidence of the conviction of an offender, but the record of such conviction, formally made up, and judgment entered upon it; and, in order to justify this latter resolution, Mr. Phillips suggests, that reasons *peculiar to that case*, might have operated on the minds of the committee.

Felons.

Phillips,
p. 170.

Perjury and
subornation
of perjury.

8. By the statute 2 Geo. II. c. 24. s. 6. " No
" person, convicted of wilful and corrupt perjury,
" or subornation of perjury, shall, after such
" conviction, be capable of voting in any elec-
" tion of any member or members to serve in
" parliament."

Bribery.

9. By the 2 Geo. II. c. 24. s. 7. it was enacted,
that if any person who hath, or claimeth to have,
any right to vote at any election of any member
or members to serve in parliament, shall " ask,
" receive, or take any money, or other reward, by
" way of gift, loan, or other device, or agree or con-
" tract for any money, gift, office, employment,
" or other reward whatsoever, to give his vote,
" or to refuse or forbear to give his vote, in any
" such election, or if any person by himself, or
" any person employed by him, doth or shall,
" by any gift or reward, or by any promise,
" agreement, or security for any gift or reward,
" corrupt or procure any person or persons to
" give his or their vote or votes, or to forbear
" to give his or their vote or votes, in any such
" election, such person so offending in any of
" the cases aforesaid shall for every such offence
" forfeit the sum of 500*l*." to be recovered as
directed by the act, " together with full costs of
" suit; and every person offending in any of the
" cases aforesaid, from and after judgment ob-
" tained

“ tained against him in any such action of debt,
“ bill, plaint, or information, or summary action
“ or prosecution, *or being any otherwise lawfully*
“ *convicted thereof*, shall for ever be disabled to
“ vote in any election of any member or mem-
“ bers to parliament; and also shall for ever be
“ disabled to hold, exercise, or enjoy any office
“ or franchise to which he and they then shall, or
“ at any time afterwards may be entitled, as a
“ member of any city, borough, town corporate,
“ or cinque port, as if such person was naturally
“ dead.”

Bribery.

By section 8. “ If any person offending against
“ this act shall, within the space of twelve
“ months next after such election as aforesaid,
“ discover any other person or persons offending
“ against this act, so that such person or persons
“ so discovered be thereupon convicted, such
“ person so discovering, and not having been
“ before that time convicted of any offence
“ against this act, shall be indemnified and
“ discharged from all penalties and disabilities
“ which he shall then have incurred by any of-
“ fence against this act.”

By section 11. of this act (as explained by
9 Geo. II. c. 3. s. 8.) “ no person shall be made
“ liable to any incapacity, disability, forfeiture,
“ or penalty, by the said act (2 Geo. II. c. 24.)
“ laid or imposed, unless such person has been
“ or

Bribery.

“ or shall be actually and legally arrested, summoned, or otherwise served with any such original, or other writ or process, within the space of two years after any offence against the said act has been or shall be committed, so as the service of any such original, or other writ or process, hath not been or shall not be prevented by such person absconding or withdrawing out of this kingdom.”

3 Burr.
p. 1338.
Rex v. Pitt.
Rex v. Mead.

“ Bribery at elections of members of parliament, must always have been a crime at common law, and consequently punishable by indictment or information;” but there are no traces of any action or prosecution for this offence, till after the above-mentioned act had inflicted particular penalties and incapacities upon it. This statute was not meant to take away the common law crime, but to add a penal action; and in the King and Pitt, where the court had granted an information within the two years, and the defendant had been found guilty, he was sentenced to six months imprisonment (having been already imprisoned some time) not as a punishment adequate to the offence, but additional to, and over and above the forfeiture and disabilities inflicted by the act of parliament, to which he still remained liable. In the King and Mead, the defendant, at the same time, for a similar offence, was imprisoned for three months. In delivering the judgment

judgment of the court upon these two cases, Lord Mansfield seems to have thought, that the forfeiture and disabilities, mentioned in the act, could be incurred only by prosecutions founded on that act. But Mr. Douglas remarks, that “ the same
 “ incapacities ensue upon a conviction on a pro-
 “ secution for bribery, by way of information, at
 “ common law, as when the proceeding is by
 “ an action under the statute ;” and for this relies on the words, *or being any otherwise lawfully convicted thereof.*

Bribery.

4 Dougl.
p. 294.

In the construction of the 8th section of the act of the 2 Geo. II. it has been held, that the discovery of an offender, who is already indemnified, is not sufficient to indemnify a person prosecuted, for no one is thereby substituted, who can be punished, and so the act would be evaded; and that the conviction alluded to, which is to give the indemnification, is where the offender is prosecuted by action, by obtaining judgment; where in a criminal suit, by such a legal conviction as may be followed by judgment and punishment.

Lord Port-
chester v.
Petrie.E. 23. Geo.
III. B. R.

In construing the 11th section, it ought to be remembered, that though prosecutions founded upon the statute are limited to two years, those at common law are not bound by any limitation. Should then a conviction be had upon an indict-

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ment

Bribery.

ment for bribery, founded on the common law, in which the offender had been served with process after the two years were expired, the disabilities mentioned in the statute certainly would not attach.

Smugglers.

25 Journ.
p. 110.

7. The running of uncustomed goods does not disable a freeholder from giving his vote; but a committee of the House of Commons thought fit to recommend its being added to the list of disabilities.—24 March 1745. The committee appointed to inquire into the causes of smuggling, and to consider of effectual methods to prevent it, resolved, “that it was their opinion, that the incapacitating all persons, who shall be hereafter convicted of running uncustomed goods, from voting at elections of members of parliament, would be a means of preventing smuggling.” This resolution was never carried into effect.

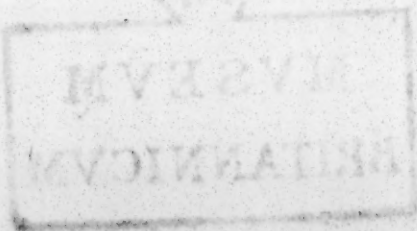
C H A P. VII.

OF THE PLACE AND TIME OF ELECTION—OF THE
SHERIFF'S DUTY AND POWER, AND OF THE
MODE OF PROCEEDING AT THE ELECTION,
WHETHER DETERMINED BY THE VIEW, THE
POLL, OR THE SCRUTINY.

THE writ does not point out *the place* at which the election is to be made, but directs only, that it shall be at the next county court. So long, therefore, as the writ was the only guide to the sheriff, he exercised the power vested in him by the common law* of holding his

Place of
election.

* This right of the sheriff had been restrained in several instances; thus, the county court for Northumberland is to be held at Alnwick, by statute 2 Ed. II. c. 25.—for Sussex, alternately at Chichester and Lewes, by 19 Hen. VII. c. 24.—for Cheshire, in the Shire Hall of the said county, by 33 Hen. VIII. c. 13.—for Brecknockshire, at Brecknock—for Radnorshire, at New Radnor, or Preston—for Montgomeryshire,



Place of
election.

his court wherever he thought fit within his county. But by the 7 & 8 W. III. c. 25. f. 3. it is enacted, that he shall hold his county court for the election, " at the most public and usual
" place of election, and where the same has
" most usually been for forty years last past."

In the late war, when, from the great number of French and Spanish prisoners confined at Winchester, where the election of knights of the shire for the county of Southampton had been usually made, it would have been dangerous to have withdrawn the troops stationed there (as required by the 8 Geo. II. c. 30.) the 20 Geo. III. c. 1. was passed, authorizing the sheriff to hold the election *for that time* at New Alresford, instead of Winchester.

32 Journ.
p. 756. 864.
905.

In 1770, a petition was presented by the freeholders of the county of Pembroke, complaining of the undue election of Hugh Owen, esquire, for that county. It charged, that the writ issued on the 6th of March, and that the next monthly county court was to have been held on Tuesday the 13th, in the regular course; that the sheriff, instead of holding it upon that day, caused a notice, in writing, though dated the day before, to

gomeryshire, at Montgomery or Maghenleth—for Denbighshire, at Denbigh or Wrexham—and for Monmouthshire, at Monmouth or Newport, by 27 Hen. VIII. c. 26.

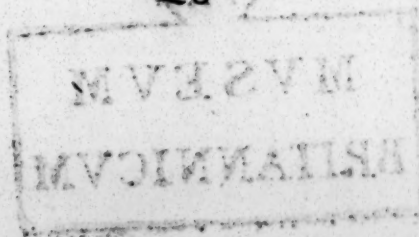
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be fixed up at the county court at Haverford West, and other market towns, that he would hold his next county court on the next Tuesday, the 20th, at the town of Pembroke; and caused another notice to be in like manner fixed up, that he would then and there proceed to the election of a knight of the shire, having received the writ for that purpose. The petition stated, that Hugh Owen and John Symmons, esquires, were the candidates; and complained of the sheriff's proceedings as highly illegal, partial, and injurious to the freeholders in two essential points, as to the *time* and *place* of election: 1st, because Tuesday, the 13th of March, when the notice was fixed up, was the day on which the monthly county court ought to have been held; and, if the writ had been received on that day, or within six preceding days, the sheriff ought then to have adjourned the court, and given ten days notice of proceeding to election; or, if the writ had been received six days before, then he ought to have proceeded to an election on the said 13th day of March. 2dly, That the town of Pembroke was inconvenient to the freeholders from its situation; and the communication with it, from the greatest part of the county, was by certain ferries under the influence of Mr. Owen; while Haverford West, which was in the center of the county, was the most convenient place for an election,

Place of
election.

Q3



Place of
election.

32 Journ.
p. 864.

Ib. p. 904.

tion, and the elections had been usually and constantly held there for upwards of forty years past, save in one instance about thirty years before.—The petition further stated, that Mr. Symmons gave notice, in writing, to the sheriff, that the time and place appointed for the election were illegal, and that he would not attend there; and some of the freeholders, on the day appointed, went to the polling place at Pembroke, and, in the presence of the sheriff, and Mr. Owen and his friends, protested against the sheriff's proceedings; but the sheriff, paying no attention to the notice or protest, proceeded to the election, received Mr. Owen's votes, and returned him knight of the shire for the county of Pembroke. The petition was heard at the bar of the House; the petitioners proved, that, from 1625 to 1696, no county elections had been made at Pembroke; from 1696 to 1727 there had been but two; and from 1727 to that time, but one, viz. in 1741*. —In general, the facts alledged in the petition were proved, except that what was sworn as to Pembroke being an inconvenient place, was contradicted by evidence. The sitting member shewed the usual practice as to the manner of ap-

* Though the election in 1741 was contested, and a petition presented against it, the petition did not alledge this as a cause of complaint, and was afterwards withdrawn.

pointing

pointing a county court, when the former county court was dropped; and we must presume, though it is not stated in the report, that he had acted conformably to it. It was proved, that the sheriff had appointed the county court to be held at Pembroke, before he had received the writ; and had appointed that place, because it was the county town, and not liable to objections, which had been formerly made against a sheriff, for holding the election within the town and county of Haverford West*. The House resolved, that, under these circumstances, Hugh Owen, esq; was duly elected.

Place of
election.

The *day* of election, as we have seen when treating of the steps to be taken preparatory to it, must be fixed by the sheriff, according to the directions of the act of the 25 Geo. III. c. 84. And, that day being come, the sheriff (by 23 Hen. VI. c. 14. s. 2.) is bound to proceed to the election "in convenient time;" that is to say, "in his full county, between the hour of eight" and the hour of eleven before noon, without "collusion on this behalf," under forfeiture of 100*l.* to the King, and 100*l.* to him that will

Pa. 10.

Hour of elec-
tion.

* The petitioner had proved, that the Guildhall, where the elections were usually held, was locally situated in the county of Pembroke, and not in the county of Haverford West, which is a county of itself.

Hour of
election.
4 Inst. p. 48.
Glanv. p. 102.

sue for the same. But, though the election must begin within the limited time, it has been long settled, that it is not necessary that it should be concluded within those hours.

Proclama-
tion.

1 Whitel.
P. 395.

Writ to be
read.

Act against
bribery read.

The freeholders being assembled, the sheriff is, by the 7 Hen. IV. c. 15. to begin the election by making proclamation, in the full county, of the day and place of the meeting of parliament, which is usually done by making proclamation for silence, and then reading the King's writ; "and then," says the statute of 23 Hen. VI. c. 14. "all those who are there present, as well
" suitors duly summoned for the same cause, as
" others, shall attend to the election; and then,
" in the full county, shall proceed to the elec-
" tion of knights for the said county, freely and
" indifferently; and then *the persons present* shall
" elect the knights accordingly." But by a subsequent act of parliament (2 Geo. II. c. 24.) after proclamation made, the sheriff is required to read the writ of summons to the meeting; and *immediately after that is done*, to read, or cause to be read, openly, before the electors there assembled, the act of the 2 Geo. II. c. 24. intitled, "an act for the more effectually prevent-
" ing of bribery and corruption in the election
" of members to serve in parliament, and every
" clause therein contained." The sheriff is also
required,

required, immediately *after reading of the writ**, Sheriff sworn.
 to take the following oath, which may be administered by any justice of the peace for the county, or any three electors, if there is no justice present, and it is to be entered on the records of the sessions of the county:

“ I A. B. do solemnly swear, that I have not,
 “ directly nor indirectly, received any sum or
 “ sums of money, office, place, or employment,
 “ gratuity, or reward, or any bond, bill, or
 “ note, or any promise or gratuity whatsoever,
 “ either by myself, or any other person to my
 “ use, or benefit, or advantage, for making any
 “ return at the present election of members to
 “ serve in parliament; and I will return such
 “ person or persons as shall, to the best of my
 “ judgment, appear to me to have the majority
 “ of legal votes.”

Returning
 Officer's
 oath, by
 2 Geo. II.
 c. 24. s. 3.

After these forms have been complied with, the electors then personally present proceed to the election, according to the usage of the place, or such agreement as they make among themselves.

Election how
 made.
 1 Whitel.
 p. 390.

“ Some time,” says Whitelocke, “ a way of
 “ election hath been used by a kind of scrutiny,

Ibid. p. 391.

* There is an inaccuracy in the penning of this act; for the sheriff, in one part, as above stated, is required to read the 2 Geo. II. c. 24. and in another, to take the oath, immediately after reading of the writ.—Quere, then, which is to be done first?

“ in

Election how
made.

“ in writing the names of the persons whom
“ they would have to be chosen in several papers,
“ and none to know who wrote the paper; but
“ they who were written most often carried the
“ election. Sometimes, to prevent difference
“ and heat of faction, lots have been used with
“ us in elections. But in general the election is
“ made either by the *view*, or the *poll*.”

It is made by the *view*, when the general inclination of the assembly in favour of any particular candidate or candidates is discovered and declared by the sheriff, with the consent of the electors present. The *poll* is the numbering the polls of the electors who may tender their votes, taking their votes individually, and separating them from those who have no votes.

By the view.

The election made by the view, may be by voices, or holding up of hands, the collecting of the friends of each candidate into separate troops or bodies, or such other way as has been usual upon such occasions. The most common way is, by voices of the electors calling out the names of their favourite candidates. Brook, Lord Chief Justice of the Court of Common Pleas, who had been several times returned member for the city of London, so long ago as in the 2d year of Queen Mary (1554) said, that “ he
“ himself had been elected in London, by hold-
“ ing up of hands; but that he could not tell how
“ many

1 Whitel.
P. 393.

Plowd. Com.
P. 128.

“ many there were that held up their hands;” and the same mode of election, Whitelocke tells us, prevails in other places.

In whatever way the election of knights of the shire is made, the high sheriff is to pronounce who hath most lots, or hands, or voices; and, if he cannot determine in the first instance, with consent of the freeholders present, and “ the party or the freeholders demand the poll, the sheriff cannot deny the scrutiny; because,” says Lord Coke, “ he cannot discern who be freeholders by the view; and then, though the party would wave the poll, yet the sheriff must proceed with the scrutiny.” And Whitelocke, using nearly the same expressions, says, that “ if any party in competition, or the freeholders electors, do, upon the election, demand the poll, the sheriff cannot deny it; and, though the demanders of it do afterwards wave it, yet the sheriff must proceed in the scrutiny; so tender of the freedom and indifferency of elections is the law of parliaments.” And the Journals afford many instances to prove, that such has been the law from the earliest times.

Poll demanded.

1 Whitel.

P. 393.

4 Inst. p. 48.

1 Whitel.

P. 387.

In the case of the county of Cambridge, April 19th 1614, Sir Maurice Berkley said, “ that the only objection that the sheriff refused to take a scrutiny of the freeholders. That the

1 Journ.

P. 468.

“ sheriff

Poll de-
manded.

“ sheriff bound to take a scrutiny of the free-
“ holders; not upon the motion of one or two
“ (for that would trouble the country) not be
“ moved before the reading of the writ, nor two
“ or three hours after, when the freeholders
“ gone, but in fitting time.”—It should seem
that the sheriff was required, by Sir Joseph Pey-
ton, *to number them*, not to examine the freeholds
of the electors; but that two hours afterwards,
when the sheriff was at dinner, an examination
into their freeholds was required by one of the
candidates, and refused. The two sitting mem-
bers returned upon the view, were allowed to
keep their seats; and it was resolved that the
sheriff should not be sent for. A further debate
arose upon this election, 14th May 1614; but
the resolution of the House does not appear.

1 Journ.
P. 485.

Ibid. p. 801.

In the case of Yorkshire, July 4th 1625, one
of the charges against the sheriff was, that,
when the poll was required, (which he broke off
before it was finished) “ he said it was only of
“ courtesy to grant it.” In the debate upon this
election, Sir Edward Coke said, “ he liked not
“ the sheriff’s answer, that he needed not grant
“ the poll, for *he is bound to grant it.*”

8 Journ.
P. 76.

City of Litchfield, 27th June 1660.—The com-
mittee reported, that the sheriff of the county of
the city of Litchfield had carried himself partially,
not only by denying the poll to the petitioner,
but saying that Mr. Watson (the sitting member)
had

had such a party at the committee of privileges, that though Mr. Minors (the petitioner) had a thousand witnesses, he should not carry it.—The fitting member was declared duly elected, having the greater number of votes, and the sheriff ordered into custody of the serjeant.

Poll demanded.

Warwickshire, 2d December 1640.—Upon a petition of the freeholders, the high sheriff, for refusing to go on with the poll when it was desired, was brought up as a delinquent, committed to the Tower, fined 100*l.* to the King, and ordered to make submission to the House, and at the next general assizes in that county. The election of each of the sitting members was resolved to be void.

2 Journ.
P. 23. 43.

Preston, 20th June 1660.—The committee reported, that, at the time of the election, a poll was denied by the mayor, and therefore the election was avoided.

8 Journ.
P. 69.

Southwark, 2d March 1623.—Reported, that, at the day appointed for the election of burgeses, Mr. Richard Yarwood was clearly chosen, in the first place, and so pronounced; and, for a burges, in the second place, Mingaie and Bromfield were proposed. The persons present, according to ancient usage, held up their hands, to signify for whom they voted; upon the first trial, it seemed Mingaie had the majority; upon the second, it was clear Bromfield had most hands. But there were divers watermen and others present who had

Glanville,
P. 7.
1 Journ.
P. 724.

Poll de-
manded.

had no vote, " and albeit," says Glanville, " a
" motion was made in due time to try, *by num-
" bering the polls of the electors*, who had the
" more voices, yet that course was not taken,
" but the assembly of the electors dissolved
" without numbering the polls." And a double
return was made. Yarwood being returned in
both returns, he was allowed to keep his seat;
but as between Mingaie and Bromfield, it was
resolved to be a void election, for that " there
" being *a contrariety of opinions amongst the elec-
" tors*, and the poll duly demanded for clearing
" of the doubts, the truth was not tried out by
" the poll, which is the only certain means
" rightly to decide the difference in case of op-
" position, especially where others are present
" besides the electors, who, in holding up their
" hands, or founding of voices, or separation of
" companies, or the like, amongst a multitude,
" cannot be distinguished from the electors;
" and so the proceedings of the electors in this
" case, concerning the second burges's place,
" being very imperfect, and void in law, a war-
" rant ought to be made;" which was accord-
ingly done, and a new writ issued.

Glanville,
P. 76.

1 Journ.
P. 759.

Newcastle under Line, 9th April 1624.—Mr.
Leveson was clearly chosen a burges in the first
place; Sir Edward Vere and Mr. Keeling were
proposed for the second place; some voted for one,
some for the other, and it was doubted which had
most

most voices. Upon a dispute arising what persons, inhabitants of the borough, had the right of election, "the poll being requisite to discern the truth, who had the voices of most electors, was called for, but not pursued," on account of the difference about the right. Sir Edward Vere was returned (with Mr. Leveson) but his election was declared void, and a new writ ordered.

Poll demanded.

Chippenham, 20th June 1661.—No due notice of the election was given, and the poll being demanded for all the three candidates, was denied against one, and the election was declared void, and the returning officer sent for in custody.

8 Journ.
P. 276.

Cirencester, 21st May 1624.—The right of voting was not ascertained; and, as there was no custom or charter, depended upon the common law.—The first burgess was elected without dispute; but as to the second, it was questioned. And a dispute arising whether the election should be by all the inhabitants, or by the freeholders only, it was agreed by the candidates, that the election should be made only by freeholders; and a poll was demanded on the part of Sir Maurice Berkley, of the freeholders only, and so granted. The freeholders were then polled, an oath being first administered to every elector, to declare whether he was a freeholder or not, before his voice was admitted; and upon a petition of divers inhabitants, on behalf of themselves and

Glanville,
P. 104.

1 Journ.
P. 708.

Sir

Poll de-
manded.

Sir Maurice Berkley, the following resolutions of the committee of privileges were reported to the House.

* * * *

5thly. "That the administering an oath to the
" freeholders in a borough, was an unlawful
" act; for such an oath is only to be given in
" the county court, by the statute, in case of
" choosing knights for the shire, and not in case
" of choosing burgessees within a borough."

6thly. "That the polling, or numbering, of
" the freeholders only, was an unlawful and
" void act, they not being the sole electors."

7thly. "That the swearing of the freeholders,
" and polling of them, however the same might
" reflect upon the under-sheriff, or others, in
" point of misdemeanour, yet the same did not,
" nor could make void the election of Sir Wil-
" liam Masters, if otherwise he had a substantial
" and good election."

* * * *

"That, upon the whole matter, Sir William
" Masters was well elected by the greater num-
" ber of the due electors, namely, of the inha-
" bitants, householders, residents; for when he was
" declared by the bailiff to have the greatest
" voice, and no man contradicted the same, nor
" demanded the polling or numbering of all the
" inhabitants so present, as admitting and al-
" lowing, that of such kind of persons he had
" the

“ the most voices, but demanded the poll only
 “ of freeholders, and of none others, it was a
 “ void demand of the poll; for the rest, and all
 “ that followed thereupon, was meer surplusage
 “ and idle, the election being duly finished and
 “ accomplished before. But if the poll had
 “ been demanded of the inhabitants, house-
 “ holders, resiants, then, if the same had not
 “ been granted and taken accordingly, the elec-
 “ tion had been void, and a new writ must have
 “ gone forth to choose another in the place of
 “ Sir William Masters; and if any one had
 “ rested unsatisfied that Sir William Masters
 “ had the most voices of rightful electors, he
 “ might have demanded the poll of them at any
 “ time before the assembly was dissolved, which
 “ lasted all the while the freeholders were in
 “ polling, and afterwards till Sir William Mas-
 “ ters was the second time, and finally, declared
 “ burghers in the second place.” Sir William
 Masters was declared duly elected, and took his
 seat accordingly.

Poll de-
manded.

Cambridgeshire, 16th March 1623.—Where
 at the election the friends of one set of candidates
 collected into one troop, and the friends of the
 other candidates did the same, and it was doubt-
 ful which had the greatest number, and the
 under-sheriff promised “ that he would swear the
 “ freeholders according to the statute, *and so try*

Glanville,
p. 80.

1 Journ.
p. 737.

R

“ out

Poll de-
manded.

“ *out the right by the poll,*” but afterwards departed without finishing the election, *by swearing and numbering the freeholders by the poll*, as he ought to have done, and declaring who were elected, and made a return in another place; it was held, “ that no election at all was had “ or made, of any one knight of the shire for “ the said county, but that all was void, by “ reason that the view being uncertain, and “ divers mingled amongst the freeholders, who “ ought not to have voices, nor could be distinguished from the freeholders by the view, “ the poll was justly, and in due time, demanded, and the denying thereof, or not accomplishing thereof, in such case of doubt, where “ neither side yieldeth to the other, turneth all “ into a nullity;” and a new writ was ordered.

9 Journ.
P. 110.

Evesham, 12th November 1669.—The committee made its report; and, the matter being debated in the House, whether the denial of the poll did avoid the election, the question was put to agree with the committee, that the election is not void; and, on a division, disagreed to; and the mayor was sent for in custody for his misdemeanour and miscarriage in making the return for that borough, and *denying the poll*.

From the case of Southwark, and some of the others just cited, it should seem that anciently the
returning

returning officer was not obliged to grant a poll as a matter of course, but only where a real doubt arose as to the person who had the majority of votes of electors *then present*, where there was a contrariety of opinion among those electors, or some of the candidates were dissatisfied with his determination on the view, and the poll was demanded by a respectable number of voters, or one of the candidates. So in the case of Montgomeryshire, July 16, 1660, where the poll had been demanded, and refused by the sheriff, the committee reported their opinion, that it had not been "so demanded and refused, as to make the election void;" and the sitting member kept his seat. But the law being now settled, that the electors who vote at an election need not be present at the reading of the writ; it is necessarily settled also, that the sheriff shall not refuse a poll when demanded in any case, by any candidates or electors, because nothing can be inferred, as to the majority of voters, from the few usually attending at the beginning of an election.

Poll demanded.

8 Journs,
P. 90.

From the case of Cirencester we collect, that where there is a dispute as to the right of voting, the returning officer may refuse a poll demanded of one class only, and not of the voters generally; and that if he grants a poll of persons who have no pretence to be admitted to vote, the admission of them will not avoid the election, though it may

Poll demanded partially.

Poll demand-
ed partially.

be a misdemeanor in him; but in most cases the statute of 7 and 8 W. III. c. 7. s. 1*. gave him a safe line to go by; and now he must poll that description of persons in whom the right is vested by the last determination of the House of Commons, or of a select committee under the 28 Geo. III. c. 52; and if any doubt arises upon the construction of such determination, as has happened in the cases of Preston and Pontefract, the safest way is to admit the voters of both descriptions, unless there has been a determination of the House, putting a construction upon it, which ought then to be his guide. As the returning officer cannot grant a poll for one description only of voters, so neither can he grant (as may be seen in the Chippenham case) a poll for some of the candidates, and deny it to another. He cannot grant a poll partially, he must grant it for the whole, or not at all.

Poll demand-
ed when.

From the case of Cambridgeshire, before cited, it appears that a sheriff, or other returning officer, was not bound to grant a poll, unless it was demanded *in fitting time*, neither before the writ was read, nor after the business was over.

8 Journ.
p. 280.

Thus Southwark, 26th June 1661, a poll demanded an hour and a half after judgment upon the view, was deemed too late. We have seen

Pa. 231.

* This statute made the last determination binding on returning officers; but this subject will be more minutely discussed hereafter.

that

that the election must begin between the hours of eight and eleven in the forenoon, and formerly the poll must have been demanded and granted within that time. In the debate on the case of Yorkshire, July 4th, 1625. Mr. Glanville said, that if the poll was demanded before eleven, *but not granted before*, then the poll was not granted at all, because the time for the election is passed. In modern times such strictness is not insisted upon; and, as the sheriff may declare the majority upon the view after the statuteable hours are elapsed, so any freeholder or candidate may demand a poll at any time, whether within the prescribed hours or not, before the sheriff has declared that majority, or within a reasonable time after.

Poll demand-
ed when.1 Journ.
p. 802.

If, after the sheriff has declared the numbers upon the view, and granted a poll, no freeholders should tender their votes within a competent time, he would be justified in making a return according to the view. Thus Westminster, 26 June 1661, the high-bailiff had declared the numbers, but a poll being demanded, was granted; five clerks were appointed to take the poll; but after the high-bailiff had staid above half an hour, and nobody came to vote, he returned those candidates who had had the majority on the view; and they were resolved to be duly elected.

Poll deserted.

8 Journ.
p. 280.

Electors present at the proclamation.

1 Whitel.
P. 390.

10 Journ.
P. 577.

The statute of Merton allowed any freeholder to absent himself from the county court, provided he appointed an attorney to attend, and do suit for him there. These attornies were invested with the power of electing the knights of the shire, in the name of their principals; but the statute 8 Hen. VI. put an end to this practice, and, by requiring each freeholder to answer the sheriff upon oath, how much he might expend by the year, confined the election to such voters only as were personally present. The electors for cities and boroughs were always obliged to give their votes in person. Therefore Whitelocke tells us, that "those who have votes at the elections of members of parliament, cannot depute the right and privilege to another, but must be present at the election, and give their suffrage themselves." In the case of Tavistock, 8th December 1691, a voter was objected to because he voted by proxy.

By the writ it is required, that the election of knights of the shire shall be made "freely and indifferently, by those who *at such proclamation* shall be present;" and the 7 Hen. IV. c. 15. enacts, that "all that be there present shall attend to the election," &c. So that in the early period of our parliamentary history, there is no doubt that those only were permitted to vote, who were present when the sheriff declared by

by proclamation, and reading the writ, his intention to proceed to the election.

Electors present at the proclamation.

The first case that occurs in the Journals, is that of Arundel, 24 March 1623-4.—Mr. Mill was declared duly elected, although, to obtain a majority on the poll, he had polled four voters who had not been present at the making of the proclamation, but came in afterwards, and, as may be collected from the loose entry in the Journal, *before eleven o'clock*, and gave voices for him. Upon the poll, as established by the committee and the House, the numbers were 29 to 27, for these votes came in time enough *whilst the election was still in hand and unfinished*.

1 Journ.
P. 748.
Glanv. 71.

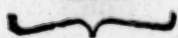
Gloucestershire, 9th April, 1624.—It was held that the going away of some freeholders, of their own accord, after a poll demanded, and before they had polled, did not make the election void; and that such as came after the poll began, and *after eleven o'clock*, did come time enough to give their voices.

Glanv. p. 99.
1 Journ.
P. 759.

Dorsetshire, 11 February, 1625.—The sheriff had refused the votes of some electors, who would not swear that they were present at the reading of the writ, for which purpose an oath was framed. The under-sheriff and county clerk being in town, were ordered to attend the committee, and the sending for the high-sheriff, being seventy-two years old, respited till they were heard. In

1 Journ.
P. 818.

Electors present at the proclamation.



this case it does not appear upon which ground the committee proceeded, whether upon the sheriff's refusal to poll voters who were not present at the reading of the writ, which, after the case of Arundel, he was not justified in doing, or his imposing an illegal oath upon them.

1 Journ. p. 801. 802, 803.

Yorkshire, 4th July, 1625.—One point of the sheriff's defence, to a charge of not finishing a poll, was that he began the poll at the postern-gate, and, hearing the fore-gate was broke open, and many freeholders gone, he brake it off.—5th July, it was said, for the sitting member, “when new men were let in, the sheriff could not give them oath, for he would have incurred a premunire if he had, having no power to administer such an oath, and so impossible.”—A member said, that the shutting of the gates were fit to exclude other freeholders, who might come in and give their voices now, when the time for the election is passed. But it was answered, that they might come in to vote at any time during the poll; and the election was determined to be void. In the debate, Mr. Glanville said, that it had been adjudged in the case of Arundel, that so many as came *during the poll*, had right of voices, and so in the case of Gloucester.

Ibid. p. 806.

Monmouthshire, 7 July 1625.—Mr. Chomeley moved in the House, for his father, for some direction. 1. Whether lawful for the sheriff to minister

minister an oath (i. e. the freeholders oath, required by 8 Hen. VI. c. 7.) to those which shall come in as electors after eleven o'clock.

Electors present at the proclamation.

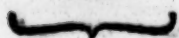
2. Whether the sheriff may make deputies to take the oath.

Whitelocke expressly says, that “ none other
 “ can legally give their votes at such a choice,
 “ but those only who are present at the proclamation made; so that some do hold, if a
 “ parcel of freeholders be brought into the place
 “ of election, after the proclamation made, and
 “ who were not present at it, that *this exception*
 “ *to their votes being taken at the polling*, those
 “ freeholders who came thus in after the proclamation, ought to be set aside, not being persons
 “ capable by the writ to make the election. And,
 “ by the same reason, that they may be admitted
 “ coming in half a day after the proclamation
 “ made, they may as well be admitted to have
 “ their votes coming in to the election ten days
 “ after the proclamation made, for so long in
 “ some counties the polling may be continued;
 “ the which would be full of inconvenience, both
 “ to competitors and to all the freeholders concerned in that election. But these periods are
 “ more proper for the determination of a committee of privileges of the House of Commons, than for any single pen.” But, in a subsequent part of his work, he tells us, that a

Vol. 1.
P. 395.

2 Whitel.
P. 25.
question

Electors present at the proclamation.



question had arisen upon this point, where, “ upon
 “ taking the poll, which held some days, one of
 “ the competitors sent for more freeholders into
 “ the country, who came in a day or two after
 “ the polling was begun, and before it was
 “ ended, but were not present at the beginning
 “ of the election, nor at the proclamation.—
 “ Whether these freeholders should be admitted
 “ to have their votes in the election, was de-
 “ bated; and I know not,” adds he, “ yet, whe-
 “ ther it hath been determined; the words of
 “ the writ (which are also the express words of
 “ the statute) seeming to be against it, that they
 “ shall not have votes in the election, nor can
 “ set their hands, as electors, to the indentures.
 “ But practice seems to favour the other opinion,
 “ that, if freeholders appear at any time of the
 “ election, before the sheriff hath determined it,
 “ that they shall have votes, and consequently
 “ may seal the indentures. But all cases and
 “ questions of this nature are taken (and perhaps
 “ too frequently) to be both within the affection
 “ and judgment of the committee of parliament,
 “ named of privileges.”

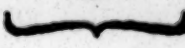
Dalton,
 p. 331.

Dalton complains, that “ divers are sent for
 “ of new to give their voices therein, who were
 “ neither present at the reading of the said writ,
 “ nor during the hours appointed; yea, perhaps,
 “ come not in till the next day.”

Hence

Hence it appears, that, even when Whitelocke wrote, the practice was, that voters coming at any time, before the poll was closed, were entitled to vote; but, as it was directly contrary to the words of an act of parliament, he doubted the legality of it. The cases before cited shew that that practice was founded upon repeated decisions of the House of Commons. It has been continued ever since, down to the present time; and the convenience attending it, in the modern state of property, probably never would permit it to be disturbed, if it had not now, as we shall see presently it has, the sanction of the legislature.—The electors, in many counties, are so numerous, that no room or building could contain them; if they were all to be collected at the reading of the writ, there could be no regularity or order, and an election contest must be such a scene of confusion and uproar as totally to prevent a possibility of numbering the electors; nor indeed, in the larger counties, could all the electors give their suffrages in the space of one day, more especially with the modern refinements in the art of electioneering, and the power which every candidate has to protract the poll.

Electors present at the proclamation.



There is nothing in the statutes of the 7 & 8 W. III. c. 25. or 18 Geo. II. c. 18. (which regulate the poll at county elections) to authorize the sheriff to receive the votes of persons who were not

Electors present at the proclamation.

29 Journ.
p. 327.

not present at the reading of the writ. In this particular, he was left to govern himself by the general usage, as settled about the time when Whitelocke wrote. In the case of Durham, 4th May 1762, the right was admitted to be in the majority of the mayor, aldermen, and freemen, which *shall be present at such election*, where, as the poll lasted several days, and none of the votes were disputed on account of the voters not being present when the writ was read, these words must have been construed to include all who came to vote at any time before the poll was closed.—The 25 Geo. III. c. 84. s. 1. enacting, that the poll shall be kept open from day to day, for fifteen days, unless all the voters shall have polled before, implies, not only that the poll may last several days, but that persons may poll who were not present when the election begun.

Candidate when nominated.

1 Douglas,
p. 246.

The question, whether a person, nominated as a candidate, after a poll had been demanded and granted for others, and the hours of election were expired, could be elected, was the subject of much discussion in the case of Bristol, so lately as the year 1775. The poll began upon a Friday, when Mr. Brickdale, Lord Clare, and Mr. Cruger, were the only candidates. On the Saturday, the second day of the poll, Mr. Burke was nominated as a candidate also; and, at the conclusion

conclusion of the poll, he and Mr. Cruger had a majority of votes, and were returned. It was determined by the committee, that Mr. Burke was eligible, and duly returned.

Candidate
when nomi-
nated.

Montgomery, 17th January 1705-6.—It was not known before the election, that Mr. Mason intended to be a candidate, nor did he appear in the town until the election was actually begun, when a Mr. Powell demanded a poll for him, and Mr. Mason appeared himself as a candidate. At the conclusion of the poll there were forty-one votes for Mr. Mason, and thirty for Mr. Vaughan. The House resolved, that Mr. Mason was duly elected.

15 Journ.
P. 94. 95.

Beeralston, 28th April 1640.—Strood, Harris, and Meredith, were all returned. Upon the day of election, viz. the 16th of March, Strood, Slainy, and Wife, were competitors; and it should seem, that it was agreed among the voters present, twenty-six in number, that if either Mr. Slainy or Mr. Wife should be returned knight of the shire for either the county of Devon or Cornwall, Mr. Strood should be a burgess for Beeralston in his room; and the election was adjourned to the 27th of March following, to be compleated. In the mean time Wife was made knight of one of the above counties, and what became of Slainy does not appear; perhaps he also had been elected a knight of the shire; for,

2 Journ.
P. 14.

on

Candidate
when nomi-
nated.

on the 27th of March, the candidates were Mr. Strood, Sir Ananias Meredith, and Mr. Harris. Mr. Harris had then 17 voices, Sir Ananias Meredith 12, and Mr. Strood but six. The committee of privileges reported, that the election of Mr. Strood was compleated on the first day, and without condition. Mr. Wise and Mr. Slainy had declared, both before and after the election, that if either of them were knights of the shire, Mr. Strood should have the *first* place as a burges. It was objected, that his indentures had been last returned; "but priority in the return
" of indentures worketh no disadvantage to him
" that comes last*;" so it was voted, the first election (of Mr. Strood) was good, and without any condition, and Mr. Harris sworn, without any exception. It was ordered, that Mr. Strood should be admitted to come into the House; and
" declared that no conditional election ought to
" be allowed."

Sheriff may
adjourn.

By the common law, the power of adjourning the county court, when convened for the purpose of electing knights of the shire, or any other officers, to any other place within the county, was vested in the sheriff.

* These are the words of the Journal; whether there was any resolution of the House or Committee, or it was taken by the clerk as part of the debate, or as the admission of all parties, does not appear.

On

On a motion for an attachment against F. and others, for a riot, &c. at a meeting of the county of Essex, for the election of a coroner, the dispute arose on the sheriff offering to adjourn it from C. to D. The gentlemen apprehended, as they were judges of the court, i. e. suitors, they might adjourn only, and that the sheriff could not.—Ch. J. and two judges held, that the power of adjourning on the occasion, on the election of verderors, knights of the shire, &c. was in the sheriff; it was his court, and so called in acts of parliament, &c.; but Eyre, J. doubted, but admitted that the sheriff had power to appoint the meeting; yet, when the court was assembled (it being no more than an assembly of people to exercise jurisdiction) they made a necessary part, and the sheriff alone could not adjourn. But Eyre, J. afterwards *mutavit opinionem*.

Sheriff may
adjourn.

7 Viner's
Ab. pa. 7.
f. 10.

Rex v. Fitz—
T. 5. G. B. R.

Cardigan Co. 28th November, 1690. (so before, 7 & 8 W. III.) By an act of parliament of 1 Mariæ, it is enacted, that the county court shall be held *alternis vicibus* at Cardigan and Aberystwyth. It was the turn to be held at Aberystwyth; but the sheriff, some time before the election, declared he would, for the ease of the county, adjourn to Cardigan, and published his intention by proclamation in the several market towns. The writ was returnable on the 20th of March; and at twelve o'clock, notwithstanding
5 the

10 Journ.
p. 486.

Sheriff may
adjourn.

the poll at Aberystwyth was not finished, the sheriff adjourned to Cardigan, at two o'clock of the next day, being advised, that that being the day of the return of the writ, he could not adjourn to Cardigan after that hour. On the next day, the sheriff proceeded on the poll, and returned Sir Carbury Price, who had the majority. The committee resolved, that this adjournment from Aberystwyth to Cardigan was a legal and good adjournment, and that Sir Carbury Price was duly elected. There seems to have been a good deal of party heat in this decision; for the House agreed to the first resolution by a majority of three, and to the second by a majority of *one* only.

In the foregoing case, the sheriff adjourned the county court to another place, not only without the consent of the freeholders present, but directly against their inclinations. The 7 & 8 W. III. c. 25. s. 5. probably with a view to this case, which had happened only a few years before, puts a check upon this power of the sheriff, by providing, that during the poll the sheriff shall not adjourn the county court "to
" any other town or place within the said county,
" *without the consent of the candidates.*" Here then we have a legislative exposition of the law, confirming the determination of the Court of King's Bench, and the case of the county of Cardigan,

digan, just cited; and the sheriff may, with the consent of the candidates, adjourn the poll to any other place in the county, though all the freeholders present should object, provided he conforms to the provisions of the 25 Geo. III. c. 84.

Sheriff may
adjourn.

In one instance the sheriff is compellable to make an adjournment to another place, at the requisition of one or more of the candidates; for by the 25 Geo. III. c. 84. s. 16. the sheriff of the county of Southampton is required, after the poll is closed at Winchester (which shall always be closed within the space of fifteen days at the most, as required by that act) to adjourn the poll to Newport, in the Isle of Wight, in case it shall be required by *one or more of the candidates*; and every such adjourned poll shall commence within four days from the close of the poll at Winchester, and shall not continue longer than three days at the most. A provision of the same nature, but not so fully expressed, had been inserted in the 7 & 8 W. III. c. 25.

The power of the sheriff to adjourn the election, from time to time, without consent of the freeholders, Whitelocke tells us, was formerly disputed; yet he adds, "the same is frequent, and not questioned at this day." The foregoing cases, which prove that he had the power of adjourning to another place, sufficiently prove

1 Whitel.
P. 354.

Sheriff may
adjourn.

the law to have been with the practice as to his power of adjourning to another time.

If the sheriff may adjourn to another time without consulting the voters, he may certainly do so without asking the consent of the candidates. But his improper conduct in this particular may be the subject of complaint to the House of Commons, as a proof of partiality, or on account of the inconveniencies arising from it. Cambridge-shire, 4th February, 1697; it was charged in the petition, and proved, that the poll had been adjourned, without the consent of one of the candidates, from five till eight next morning, and when many freeholders were present to vote, and yet the election was held good.—City of London, 5th March, 1713; in the petition, one of the mischiefs complained of was, that the sheriff, in favour of the sitting members, had adjourned, and unduly kept open the poll, without consent of the petitioners, by which tumults arose, &c.

12 Journ.
p. 16. 84.

17 Journ.
p. 488.

Members
chosen at dif-
ferent times.

It was anciently no uncommon thing for the sheriff, or other returning officer, where one of the members was chosen unanimously on the day of election, but the electors were divided about the choice of the second member, to adjourn the election of such second member, *by the agreement of the electors* then present, to a future day. One case

case of this sort has been cited already (Beer-alston) where some days intervened between the election of the first and second burgesses.

Members
chosen at
different
times.

Chippenham, 9th April, 1624.—The election was duly held, and a member chosen, in the first place, by the voters then present, and so pronounced without contradiction of any; but the electors present were equally divided as to the choice of a burgess, in the second place, and *by agreement adjourned* the election for the second burgessship till two days afterwards, at the same place; when, upon a dispute about the right of election, a double return was made. It was determined, that the first burgess was duly elected; and that Sir Francis Popham, in whose favour the right of election had been determined, was duly elected in the second place, at the second meeting; *for the adjournment, by all that effectually attended the first day, and could not then agree, was a good adjournment*; and at such second meeting he had a majority of those who had a right to vote.

Pa. 253.
Glanville,
p. 47.
1 Journ.
P. 759.

There appears, from this and other early cases, to have been formerly some distinction between the knight or burgess who was *first* elected, and him that was chosen in the second place. Some sort of pre-eminence, of which all trace is now lost, was annexed to the character of *first* knight or burgess; and for this reason the members

Members
chosen at
different
times.

1 Journ.
p. 819. 820.

were frequently, so late as the beginning of the 17th century, elected separately, though generally returned by the same indenture*. In the case of St. Edmond's Bury, 15th February, 1625, one of the members was chosen on the 6th of January, the other on the 11th; and a question arising afterwards, as to the commencement of the time of privilege of the second member, a member in the debate declared himself against these *straggling elections*.

1 Dougl.
p. 287.

Mr. Douglas, in his notes upon the Bristol case, speaking of these elections, says, "I do not know of any thing to hinder the election of the two members being made, the one after the other, at this day." And he thinks that the fair construction of the freeholders oath is, that the voter has not polled before for the election of a member to fill the same place; and, to corroborate this, he cites the oath to be taken by the voters of Norwich, in which are these words; "and that you have not been before polled at this election, or" (in case of an election for


1 Luders,
p. 293.

* The day or days of election are not always truly stated in the ancient indentures of return. They sometimes state the election to have taken place on a particular day, when perhaps it was made on two days, and both different from that mentioned in the return, as was the fact in the case of Bury above cited.

two

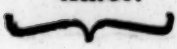
two citizens) "*but for one person.*"—This opinion of Mr. Douglas is perfectly consistent with the view I have been giving of this subject; for, if these *straggling elections* never took place but upon an adjournment of the election for some good reason, as, if there was an equality of voices for all the candidates, or if the election of one member was unanimously made, but an equality of votes was supposed to exist between the candidates for the second member's place, there is no reason why, at the adjourned election, any of the voters should be deprived of their privilege of voting *de novo*. They have been called upon to exercise that privilege, either only in part, or not at all. The statutes by which the poll at county elections is regulated, do not seem to have made any alteration in the ancient system, or to throw any impediment in the way of the sheriff, if, with the consent of the freeholders, he should proceed to the election of the knights of the shire separately, where the electors are unanimous in their choice of one of them, or even to take the poll for each of the candidates separately, where they are not so. In the latter case, indeed, he might find it difficult to compleat the polls for all the candidates within the time limited by the late statute; and, as he could hardly, without some corrupt motive, wish to protract the election, and lengthen his own at-

Members
chosen at
different
times.



Vide post.

Members
chosen at
different
times.



tendance, he would have to dread the displeasure of the House of Commons. In the former case, of the electors being unanimous in their choice of the first knight, one very great convenience would follow from proceeding separately to the election of the other; for it is a circumstance of great hardship, that he, whom all are unanimous in electing, should be obliged to go through the fatigue and ruinous expence of a contest, because it is disputed only who is to be his colleague.

Poll in general.

Let us now suppose, that, in the more ordinary mode of proceeding, the candidates have been declared, the booths erected, and all the necessary requisites complied with, before the day of election. Let us further suppose, that the day and hour of election is arrived, and that a poll has been demanded and granted; and then let us examine in what manner the sheriff is to proceed.

The time of commencing the poll, and the hours and days on which it is to be taken, are minutely fixed by the 25 Geo. III. c. 84. and the sheriff's power to adjourn or protract the election is much abridged; but the mode of conducting the poll must be afterwards regulated by the 7 & 8 W. III. c. 25. and the 18 Geo. II. c. 18.

The 25 Geo. III. c. 84. s. 1. provides, that
“ every poll which shall be demanded at any
“ election for a member or members to serve in
“ parliament for any county, city, borough, or
“ other place within England, Wales, or for the
“ town of Berwick upon Tweed, shall com-
“ mence on the day upon which the same shall
“ be demanded, or upon the next day at farthest
“ (unless it should happen to be a Sunday,
“ and then on the day after) and shall be duly
“ and regularly proceeded in from day to day
“ (Sundays excepted) until the same be finished;
“ but so as that no poll for the election of any
“ member or members to serve in parliament
“ shall continue more than fifteen days at most
“ (Sundays excepted); and if such poll shall
“ continue until the 15th day, then the same
“ shall be finally closed at or before the hour
“ of three in the afternoon of the same day.”
And section 3. of the same act, “ in order that
“ electors may have full time and opportunity
“ to poll,” enacts, that “ all and every return-
“ ing officer and officers, unless prevented by
“ any unavoidable accident, shall, during the
“ continuance of the poll, on every day subse-
“ quent to the commencement of the same,
“ cause the said poll to be kept open for seven
“ hours at the least in each day, between the hours
“ of eight in the morning and eight at night.”

Poll in ge-
neral.

Poll in general.

1 Whitel.
P. 394.

At common law the sheriff, or other returning officer, was not bound to take the poll *in writing*; but it is natural to suppose, that, for the convenience of all parties, and for his own justification, in case his conduct should be afterwards called in question, he would generally take it in that way. Thus Whitelocke tells us, that the mode of carrying on a poll was by “an examination of every elector’s capacity, and setting down their names;” and then the greatest number of them carried the election. The examination here spoken of, was the examination of the freeholders on oath, how much they might expend by the year, by virtue of the 8 Hen. VI. for at that time the only qualification required was, that a voter should have a freehold estate of the clear yearly value of 40 s. and the imposition of this oath was the medium of proof given by that statute.

10 Journ.
P. 123.

8 Journ.
P. 106.

Ib. p. 308.
10 Journ.
P. 72.

In the case of Abingdon, 7th May, 1689, the poll was taken in writing, and so it should seem it had been in the six preceding elections. So it was at the election at Coventry, 31 July 1660. So Hereford, 23 July 1661. Cricklade, 1 April 1689, and in other instances.

The 7 and 8 W. III. c. 25. besides altering the qualification of voters in some respects, and imposing a stricter oath, as we have shewn already, prescribed the mode of taking the poll.

poll. By section 3. of that act, it is provided, that in case the " election be not determined " upon the view, with the consent of the free- " holders then present, but that a poll shall be " required for determination thereof, ** then the " said sheriff, or in his absence his under-sheriff, " with such others as shall be deputed by him, shall " forthwith there proceed to take the same poll in " some open or public place or places, by the same " sheriff, or his under-sheriff, as aforesaid, in his " absence, or others appointed for the taking there- " of as aforesaid ; and, for the more due and or- " derly proceeding in the said poll, the said " sheriff, or in his absence his under-sheriff, " or such as he shall depute, shall appoint such " number of clerks as to him shall seem meet* Poll clerks. " and convenient for taking thereof, which " clerks shall all take the said poll in the pre- " sence of the said sheriff, or his under-sheriff, " or such as he shall depute. And before they " begin to take the said poll, every clerk so " appointed shall, by the said sheriff, or his un- " der-sheriff as aforesaid, be sworn truly and in- " differently to take the same poll, and to set " down the names of each freeholder, and the " place of his freehold, and for whom he shall

Poll in ge-
neral.

* That part of the above clause which is printed in italics, has been altered or repealed in certain cases by the 18 Geo. II. c. 18. and the 25 Geo. III. c. 84.

" poll,

Poll clerks.

“ poll, and to poll no freeholder who is not
“ sworn, if so required by the candidates, or any
“ of them (which oath of the said clerks, the
“ said sheriff, or under-sheriff, or such as he
“ shall depute, are impowered to administer).”

Pa. 11.

This statute is enforced by the 18 Geo. II. c. 18. s. 7. which, after directing booths or polling places to be erected as has been before mentioned, enacts that the said sheriff, under-sheriff, or such person as he shall depute, shall appoint a proper clerk or clerks, at each of the said booths or polling places, to take the poll (which said clerk or clerks, shall be at the expence of the candidates, and be paid, not exceeding one guinea per day each clerk). This latter statute does not require the poll clerks to take any oath, that was provided for by the 7 and 8 W. III. and all the statute 18 Geo. II. does, is to direct by whom the proper clerks, i. e. those appointed under the statute of William, shall be paid, and in what manner they shall be stationed to take the poll. The statute of George the Second has ever been considered as explanatory of the former one, and the poll clerks have always been regularly sworn, though appointed at the booths, as required by the latter statute. And the words of the 25 Geo. III. c. 84. authorize this construction, for it recites, that “ Whereas it is expedient that
“ all

“ all persons employed as poll clerks at elections,
“ should take an oath for the faithful discharge
“ of their office, but the same is not at present
“ required or authorized by law, *except in coun-*
“ *ties*, and other places for which there are ex-
“ press provisions made by the statute.”

Poll clerks.

No form of oath is given in the 7 and 8 W. III. c. 25. but the poll-clerks may be sworn as follows: “ I do swear, that I will, at this pre-
“ sent election of a member (or members) to
“ serve in parliament for the county of
“ truly and indifferently take the poll, and set
“ down the name of each freeholder, and the place
“ of his freehold, and for whom he shall poll, and
“ to poll no freeholder who is not sworn, or put
“ to his affirmation, if so legally required.”

By 7 and 8 W. III. c. 25. s. 3. the sheriff, *Inspectors.*
or in his absence his under-sheriff, shall appoint
such one person as shall be nominated by each
candidate, to be inspectors of every clerk ap-
pointed for taking the poll. And by the 18 Geo. *Check Book.*
II. c. 18. s. 9. the sheriff, under-sheriff, or such
as he shall depute, shall, at every such election,
allow a check book for every poll-book, for each
candidate, to be kept by their respective inspec-
tors at every place where the poll is taken.

The

Duty of poll-
clerks.

The poll-clerks, by the third section of the 7 and 8 W. III. c. 25. must all take the poll in the presence of the sheriff, under-sheriff, or such as he shall depute; and their duty, according to the terms of the oath, which, as has been already mentioned, they are to take before the election begins, is freely and indifferently to take the poll, and to set down the name of each freeholder, and the place of his freehold, and for whom he shall poll, and to poll no freeholder who is not sworn, if so required by the candidates, or any of them. By the 10 Ann. c. 23. s. 5. the better to detect and punish offenders against that act, they are required to enter not only the place of the elector's freehold, but also *the place of his abode*, as he shall declare the same at the time of the giving his vote; and also to make or enter *jurat* against the name of every such voter who shall be tendered, and take the freeholders oath, as imposed and altered by that act; or, by section 8. if a person being a quaker comes to vote, the sheriff by himself, or his proper officer (i. e. his under-sheriff or deputy) is authorized and required to accept his affirmation, instead of the freeholders oath, and to make or enter "*affirmat*" against his name. In the room of this oath or affirmation, another was substituted by the 18 Geo. II. c. 18. as will be seen presently.

If

If none of the candidates require any booths or places for taking the poll to be erected, three days at least before the commencement of the poll, as directed by the 18 Geo. II. c. 18. or if no candidates are declared previous to the election, but a contest comes upon the sheriff by surprise, when the freeholders are met to make their choice, the sheriff is not impowered to erect any booths or polling places at the expence of the candidates, but must take the poll in some open or public place, and pursue the regulations of the 7 and 8 Will. III. c. 25. exactly as if the 18 Geo. II. had never passed, except that by the 9th section he must allow a check book for every poll book, as where booths have been regularly erected.

Where no
booths
erected.

See pa. 265.

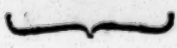
The sheriff is bound only to receive such votes as are tendered, and therefore the going away of some of the electors before they had polled, as in the case of Cirencester before cited, under a mistaken notion that they had no votes, not through any fraud or practice of the sheriff, or of the candidate who was returned, or any other on his behalf, but merely through their own ignorance or mistaking of the law who should be electors, neither impeaches the election, nor subjects the sheriff to censure.

Electors departing without polling.

Ante, p. 239.

In

Voters must
poll in proper
booth.



In the course of the poll, it is enacted by the 18 Geo. II. c. 18. s. 8. that “no sheriff, under-
“sheriff, or clerk appointed to take the poll at
“any of the booths or polling places, shall ad-
“mit any person to vote for any lands, tene-
“ments, or other freehold estate, sworn by the
“said oath” (i. e. the freeholders oath) “to be
“lying and being at some parish, town, or place,
“parishes, towns, or places, which parish, town,
“or place, or parishes, towns, or places, or any
“of them, or any part of them, is not or are
“not mentioned in the list made out for such
“booth as aforesaid, unless such lands, tene-
“ments, or estate, lie or be in some town, li-
“berty, or place not mentioned in any of the
“lists so made out for all the said booths or
“polling places.” This prohibition extends
only to such voters as, being called upon to take
the freeholders oath, describe their freeholds to be
situated in a different town or place from those
contained in the list made out for the booths
in which they tender their votes. But, as the
freeholders oath is not taken as a matter of
course by *every* elector, but only by such as are
required by a candidate, or person having a right
to vote, the votes of such freeholders as are not
sworn may be taken indiscriminately in any
booth, though the estate which qualifies him,
lies

lies within the districts mentioned in the list of another booth.

Voters must
poll in proper
booth.

Every freeholder, when he goes to give his vote, should be careful to go to the proper booth for the hundred, &c. in which his freehold lies (though, if his vote is, through the mistake of the poll clerk, taken in a wrong booth, it will not be lost).

The Reverend Decimus Reynolds, possessing a freehold in the hundred of *Flitt*, went to the booth belonging to that hundred, and there was sworn, and declared his vote for Lord Ongley, for a freehold lying in the hundred of *Willey*. He was told to go to the *Willey* booth, and no entry was made in any of the books. He did not go to the *Willey* booth, thinking his vote had been taken in that for the hundred of *Flitt*. Under these circumstances the committee did not think fit to add his vote to the poll.

2 Luders,
P. 420.

The Reverend Robert Willan held the vicarages of Cardington and Keyfoe, situate in different hundreds; he was assessed in the proper hundred for that of Keyfoe, but went into the booth destined for the hundred in which Cardington lay, and being very ill, another gentleman said for him, that he came to vote for the livings of Cardington and Keyfoe; but the clerk entered Cardington only, because Keyfoe was not in his hundred.

2 Luders,
P. 510.

In

Voters must
poll in proper
booth.

2 Luders,
p. 415.
John Oliver's
case.

In the evening the voter desired the entry to be altered, by inserting both vicarages, but the sheriff refused; and the vote was deemed bad.

But the Bedfordshire committee held a vote bad which had been given for lands lying in the parish of Shillington, in the hundred of Flitt, in the booth assigned for the hundreds of Clifton and Wixamtree. The voter declared, when he gave his vote, that his freehold lay at Shillington, but the poll clerk and check clerks had entered it as lying in *Clifton*. It was argued as if, supposing the mistake to be rectified, the vote was lost from having been given in a wrong booth.

2 Luders,
p. 509.

William Leigh polled for a tenement in Sandy parish, in the booth for the hundred of Biggleswade. It was assessed in the hamlet of Beeston, part of which only is in Sandy. The parish of Sandy is in the hundred of Biggleswade, but Beeston is locally in that of Wixamtree, though as to church and poor rates it is a hamlet of Sandy. It was objected, that he had no freehold, *as he described it*, duly assessed, because he had voted in the Biggleswade booth; it was answered, that it did not signify in what parish or hamlet the freehold was assessed, provided it was assessed in any; and the vote was deemed good.

When

When the voter has made his way into the proper booth, he must tender his vote *to the poll clerk*; for in the Gloucestershire committee it was held (8 to 7) that "a voter declaring in the booth his intention to vote for a particular candidate, *but not to the poll clerk*," was not a proper tender of his vote. And they also resolved (12 to 1) that where it was sworn only that a voter, who had been rejected, had tendered his vote to the under-sheriff for Mr. Chester, but the witness did not recollect *who* asked him the question for whom he tendered his vote, although it was proved *every* voter was asked it, it was not a sufficient tender.

Votes to
whom ten-
dered.

Gloucester,
P. 32, 33, 34.

Ib. p. 149.

Willoughby
Hyley's case.

The tender is not made at a proper time, if made before the election is begun; and the election will be set aside, if the sheriff unjustly excludes (even upon a mistaken notion that they are not qualified to vote) such a number of the known friends of one of the candidates, as would have given him a decided majority.

Vote when
tendered, &c.

Winchelsea, 18th March, 1623, agreed the mayor, jurats, and freemen, ought to elect. A question arose, whether two freemen of the name of Tilden ought to vote, because non-resident, one for five months, the other for six months, before the election; and a decree had been made,

1 Journ.

P. 739.

Glanv. p. 12.

T

that

Vote when
tendered, &c.

that whosoever did not dwell there within three months next before the election, should have no voice. The mayor would not proceed to the election till they were gone, but before they went, they said they gave their voices for Sir A. Temple. After their departure, there were sixteen electors present. The precept was read, and the mayor and seven others voted one way, and eight the other way, for Sir A. Temple. A question then arose, whether, by the custom of Winchelsea, the mayor had a casting voice, and the committee were not satisfied he had such privilege, but rather the contrary. Some of the electors who voted for Sir A. Temple, afterwards joined in the return of Mr. Finch, and put their hands to the indenture ; but there was no assent to his election but in the assembly. The committee resolved, 1st, That the Tildens, who were so excluded, ought to have voted ; 1. because this decree could not alter the law ; 2. because they exercised the quality of freemen, had empty houses in the town, had their share in common profits, and never questioned till now ; besides, by the custom of the ports, they must be absent a year and a day. 2d, No good election of Mr. Finch, because these men excluded unjustly. Yet the committee likewise conceived that Sir A. Temple was not duly elected, because these men gave not their votes at the time of the election,

tion, but too soon, before the precept read, and before the election was begun, and therefore a new writ ought to issue; which the House ordered accordingly, and resolved the two Tildens ought to have voice in the election.

Votes when
tendered, &c.

It seems that anciently a freeholder, who satisfied the sheriff that he had an estate of sufficient value to entitle him to vote, was not disabled from giving his vote, because he refused to declare his name. Yorkshire, 17th April, 1628. From the report of the committee of elections, it appears that the question was, Whether certain freeholders, who refused to declare their names when they tendered their votes at the election, were not disabled to be electors. They had answered to three questions, 1st, That they had each 40s. a year freehold. 2d, Were residents in the county the day of the date of the writ. 3d, The committee were of opinion, that it was not necessary to insert the names of the freeholders to the indenture of return, and held it inconvenient to have them set down their names, because notice might be taken of them to their prejudice: and the House resolved, "That if an elector or freeholder, being by the sheriff upon the poll demanded his name, shall refuse it, he is not disabled to be an elector."

Voter must
declare his
name.

1. Journ.
p. 884.

Voter must
declare where
his estate lies.

Gloucester,
p. 140.

2 Luders,
p. 509.

Ib. p. 510.

It has been determined that the voter, when he tenders his vote, must specify the parish in which it lies. It was resolved in the Gloucestershire election (8 to 5) "that it was their opinion, " that it was necessary for every freeholder at " the election, when he polls, to give in the " name of the parish, hamlet, township, tything, " or place in which his freehold was situate." And it was further resolved (7 to 6) that the word " hundred" should not be inserted before the word " parish," on account of the impossibility of finding out any particular freehold in large hundreds. In the Bedfordshire case, Thomas Harwood, Esquire, voted for land in *Colmworth*, where he was not assessed, but he was duly assessed for land in *Roxton*, a different parish *in the same hundred*. It was argued, that as the hundred was rightly named, it was unnecessary to describe the parish; but at last the vote was given up.

Henry Belfield voted for a freehold in *his own* occupation, in the parish of *Studham*, which lies part in Hertfordshire, part in Bedfordshire. The voter had land in both, but that which he held in Bedfordshire was *let*, and the voter properly assessed for it. His vote was rejected. So where a voter having land in Cardington parish, in the hundred of Flitt, which parish lies in both counties,

ties, having two tenants, named the one only who rented his land in Hertfordshire.

Voter must declare where his estate lies.

Thomas Lane voted for land in *Barton* parish, when in truth it lay in an adjoining parish. His house was very near, letters directed to his tenant, who occupied it, were directed to him at Barton turnpike, and he went to Barton church. For this false description the vote was held bad.

2 Luders,
P. 416,

The freeholders oath, imposed by the 18 Geo. II. c. 18. specifies the nature of the voter's estate, *whether messuage, land, rent, tythe, or what else*; and he should be careful to give in an accurate description; for in case it turns out to be defective either in the title, rating, or value, he cannot resort to any other of his estates to support his vote.

Voter must describe his estate.

The Bedfordshire committee resolved generally, that "If a voter gives in a freehold on the poll which is not worth 40 s. a year, the vote is to be considered as a bad one, notwithstanding he may be possessed of other freeholds amounting to more than 40 s." And therefore the vote of William Odell, who gave in premises let for only 1 l. 11 s. 6 d. *per annum*, though he had other property to the value of 3 l. *per annum*, was held to be bad. But the vote of Timothy Kidman, under the following circumstances, was rejected. He voted for a house

2 Luders,
P. 444.

Ib. p. 446.

Voter must
describe his
estate.

2 Luders,
P. 447.

Ib. p. 603.

Ib. p. 447.

and land in the occupation of John Osborn; the freehold consisted of two tenements under one roof; one, not of the value of 40*s. per annum*, let to Osborn, the other to Cope. There was only one outer door to both houses, but in every other respect they were separate dwellings. So, under similar circumstances, where one Perkins had described his freehold as consisting of *houses*, it was held good.

Before the Buckinghamshire committee, John Creaker was objected to as voting for a freehold of less annual value than 40*s.* He described his freehold as land, but it consisted of a *house* and yard appurtenant; the yard alone was not worth 40*s.* and it was contended that *land*, in a legal sense, included buildings erected upon it, and where the buildings and land made one entire tenement, they necessarily passed together; and the committee allowed an inquiry into the value of the house, in order to make out the necessary qualification.

John Gilbert gave in his freehold as consisting of *houses* in the occupation of himself and others; it was objected, that the house he lived in was not worth 40*s.* a year, and he was assessed for a house tenanted by himself; so that the freehold *for which he voted* either was not assessed, or under value. It was admitted this was an objection; but the fact as to the deficiency in value was

not proved. Daniel Palmer voted for house and land, when in fact his freehold was an annuity charged upon them, and the owner of them, John Palmer, was duly assessed, wherefore the voter, not being assessed as owner, his vote was rejected; and John Hill, in a like situation, was also rejected. But it was resolved in the Gloucestershire committee, that a person voting for an annuity, need not shew it to be registered.

Voter must describe his estate.

2 Luders,
P. 504.

Ib. p. 502.

Gloucester,
P. 148.

By the 18 Geo. II. c. 18. the voter, in the freeholders oath, must specify, if his freehold consists in messuages, lands, or tythes, *in whose occupation the same are*; and if in rent, *the name of the owners or possessors of the lands or tenements out of which such rent is issuing, or of some or one of them*.

Voter must specify his tenant.

The Gloucestershire committee resolved, “ that
“ a freeholder, not having specified the name of
“ his tenant at the time of the poll, is a *prima facie* objection to his vote.” This resolution, we may presume, related to a voter who had not taken the freeholders oath; and therefore assumes, that by the common law the sheriff had authority to require every freeholder to specify his tenant. But I know of no law by which all voters at county elections are bound to give this information. Through the medium of the freeholders oath it may be done, whenever any of the candidates, or their friends, think fit to impose

Gloucester,
P. 93.

Voter must
specify his
tenant.

Gloucester,
p. 165.

it; and this seems enough for the purposes of justice.

A person, who has several tenants, should be careful also, when he specifies the name of his tenant at the poll, to give the name of some one who holds more than 40s. a year under him; for the Gloucestershire committee resolved, "that John Noble, who was intitled to one third part of a freehold estate, by the will of Mrs. Farr, of the annual value of 6 l. whereof the tenement in the occupation of John Kingdom, of the annual value of 4 l. is a part, and having given in the name of John Kingdom, as his tenant, was not (as far as now appears) intitled to vote, &c."

Several cases of this sort, upon the assessment act, came before the Bedfordshire committee, as before stated.

2 Luders,
p. 417.

Thomas Love voted for *house and land*, in the occupation of J. Cunningham. This tenant occupied a house and garden, and his rent did not amount to 40s. but a little field adjoining, belonging to the voter, occupied by another person, would make up the sum. No evidence was given of any mistake; and therefore, merely on the ground that this was a sufficient designation of all his property, and meant to be such at the time he voted, his vote was allowed.

Ib. p. 413.

Charles Chester, esq. described his freehold to be lands in the occupation of *several persons*,
and

and this was held a good vote. But it should be observed, that the act does not declare a vote, given without observing its regulations, to be void.

Voter must
specify his
tenant.

George Martin voted for a freehold at Eaton Socon, in the occupation of Shefford *and others*; in the assessment the occupier was *himself*. It was proved, that no person of the name of Shefford lived in that parish; and that he had admitted he had, by mistake, given in the name of the tenant of an estate he had in another parish; yet the addition of, *and others*, enabled him to shew who the real tenants were, and supported his vote.

2 Luders,
p. 522.

In the Cricklade case, where the right of voting, as well as in counties, is derived from estate, it was much contested, that the voters, when they tendered their suffrages, must supply the proof of their being entitled to exercise that franchise from their own documents; but it was admitted that this held good only in elections for cities and towns; for that, in those for counties, the freeholders oath has been substituted as the most expedient method of ascertaining the truth. The following resolution of the Cricklade committee seems to be contrary not only to the law of parliament, by which no power is vested in a returning officer to call upon a person voting to give an account of the title under

Voters need
not disclose
their titles.
Ib. p. 340.

Voters need
not disclose
their titles.

under which he claims the right, but contrary to the first principles of justice, viz. "Resolved, that
" the parties were bound to give evidence only
" in support of the titles of those voters which
" had been impeached, or whose declarations of
" the rights under which they claimed to vote
" had been falsified; or *who had refused, at the*
" *poll, to give an account of the title under which*
" *they claimed a right of voting.*"

Polling
twice.

To prevent persons from polling twice at the same election for knights of the shire, each freeholder swears, as part of the oath he must take, and which was first imposed by the 7 & 8 W. III. c. 25. or the substance of which he must, if a quaker, affirm, if required, that " he has not been polled
" before at that election." But this is not the only security provided by the legislature against fraud in this respect; for, by the 5th section of the 18 Geo. II. c. 18. if any person shall vote more than once at the same election for knights of the shire, he shall forfeit to any candidate for whom such vote shall not have been given, and who shall first sue for the same, 40*l.* to be recovered as that act directs.

It has been already observed, that there is nothing in either of these acts to prevent the members, who are to be elected, from being chosen separately. If it is agreed among the
electors

electors to vote first for *one* only, and then for the *second*, a voter may safely swear, when he comes to vote for the second, that he has not been polled before at that election; i. e. the election of such second member; nor has he voted at *that* election more than once. But it is now universally understood, that where the election of both members comes on at one and the same time, that a voter cannot divide his suffrage; he cannot give a single vote only, and decline to give a second, and at the *same* election return afterwards and give a second vote. Three years after the 7 & 8 Will. III. had passed, it seems to have been doubted, whether the expression, that *he had not been polled before at that election*, was not confined to the exercising the *whole* of his franchise; for in the case of Bedfordshire, 21st December, 1699, it was resolved, by the committee of elections, nearly in the words of the ensuing Leicester resolution, that a voter could not vote at twice; but the second reading of that resolution was postponed by the House. The same point came before the committee afterwards, in the case of Leicester, 8th February 1705; and they resolved, “ that any
 “ person, having a right to vote for two mem-
 “ bers to serve in parliament, who hath given a
 “ single vote, hath not a right to come after-
 “ wards and give a second vote, during the said
 “ election;”

Polling
twice.

Polling at
twice.

13 Journ.
P. 90. 91.

15 Journ.
P. 135. 137.

“election;” which resolution was reported, and agreed to by the House. This being the case of a borough election, did not depend on any statute, but was determined upon the general law.

Voting conditionally.

Brev. P. red.
p. 277.

Pa. 253.

In the 15 Edw. II. a very singular return was made, by the mayor and commonalty of Lincoln, of two members to serve for that city, and of a third to serve in the room of one of those at first elected, whom they could not compel to attend the parliament. But from the case of Beeralston before cited, it appears, that a conditional election of a member of parliament is not allowed; and that where the suffrages have been given to a candidate upon condition, the House of Commons have considered them as given absolutely.

Sheriff may examine voters.

So long as it was considered as a burthen to be chosen to serve in parliament, the elections for knights of the shire were made without much trouble; the sheriff, in his county court, had only to declare in whose favour there was the loudest shout of applause; and when afterwards the dignity and importance of the situation produced competition, the majority of persons present determined the election, and an inquiry whether they were all freeholders or not would rarely be necessary. In process of time, when the power of alienation had led to the division of the great estates,

estates, and the county courts were attended by numerous bodies of the smaller freeholders, while the greater ones availed themselves of the privilege given by the statute of Merton to be absent, every elector of a knight of the shire was required (by 8 Hen. VI.) to have a landed qualification; and to enforce this, power was given to the sheriff to examine every elector, upon oath, how much each elector might expend by the year. It was left to the discretion of the sheriff to make this examination when he thought fit; and therefore, most probably, it was seldom instituted. This statute is still in force, and the sheriff may, as I conceive, examine into the ability of voters at this day. The power of examination being given to the sheriff only by name, it was doubted, in the case of Monmouthshire, 7th July, 1625, before cited, whether he could appoint a deputy to administer the oath.


Sheriff may
examine
voters.

Pa. 248.

So the law stood until the 7 & 8 W. III. c. 25. was passed; and by the third section, it was no longer left to the discretion of the sheriff, whether the voter should be examined as to his qualification; for it was enacted, that every freeholder, before he polled, should, *if required by the candidates, or any of them*, take the following oath, to be administered by the sheriff, his undersheriff, or the sworn clerks by him appointed for taking the poll:

“ You

Freeholders
oath.



“ You shall swear, that you are a freeholder
“ for the county of and have
“ freehold lands or hereditaments, of the
“ yearly value of 40*s.* lying at
“ within the said county of and
“ that you have not been before polled
“ at this election.”

By the 10 Ann. c. 23. f. 3. so much of the statute of William as imposed that oath was repealed, and by f. 4. every freeholder, before he was admitted to poll at a county election, was (if required *by the candidates, or any of them, or any other person having a right to vote at such election*) first to take the oath following, to be administered in the same manner as required by the last-mentioned statute.

“ You shall swear, that you are a freeholder
“ in the county of and have
“ freehold lands or hereditaments, lying
“ or being at in the county of
“ of the yearly value of forty shil-
“ lings, above all charges payable out of
“ the same; and that such freehold estate
“ hath not been made or granted to
“ you fraudulently, on purpose to qualify
“ you to give your vote; and that the
“ place of your abode is at *Thence*
“ in and that you have not
“ been polled before at this election.”

By

By section 8. " if any person, being a quaker,
 " (during the continuance of" the 7 & 8 W. III.
 c. 34. whereby their solemn affirmation was to be
 accepted instead of an oath, and which has since
 been made perpetual) " shall, upon such election
 " as aforesaid, if required *by the candidates, or*
 " *any of them*, declare the effect of the said oath,
 " upon his solemn affirmation," as directed by
 that act, every such quaker shall be capable and
 admitted to give his vote; " and every sheriff,
 " by himself, or such his proper officer as afore-
 " said, is hereby authorized and required to ac-
 " cept such affirmation instead of the said oath,
 " and shall also make or enter *affirmat* against
 " the name of every such quaker."

Freeholders
 oath.

By the 18 Geo. II. c. 18. s. 1. the freeholders
 oath, given instead of that just mentioned, is still
 more strict; and it is enacted, " that all voters at
 " the election of knights of the shire (if required
 " *by the candidates, or any of them, or any other per-*
 " *son having a right to vote at such elections*) must,
 " before they are admitted to poll, first take the
 " oath (or, being one of the people called qua-
 " kers, the solemn affirmation) following, to be
 " administered by the sheriff, under sheriff, or
 " such sworn clerk or clerks as shall be by him
 " appointed for the taking of the poll*:

" You

* A bill is now depending in parliament to authorize
 returning officers to appoint a number of persons to administer
 at

Freeholders
oath, as now
taken.

“ You shall swear (*or, being one of the peo-*
 “ *ple called Quakers, you shall solemnly*
 “ *affirm*) that you are a freeholder in the
 “ county of and have a freehold
 “ estate, consisting of (*specifying the*
 “ *nature of such freehold estate, whether*
 “ *messuage, land, rent, tythe, or what else;*
 “ *and if such freehold estate consists in*
 “ *messuages, lands, or tythes, then specifying*
 “ *in whose occupation the same are; and*
 “ *if in-rent, then specifying the names of the*
 “ *owners or possessors of the lands or tene-*
 “ *ments out of which such rent is issuing,*
 “ *or of some or one of them*) lying or being
 “ at in the county of
 “ of the clear yearly value of forty shil-

at elections the oaths of allegiance, supremacy, and ab-
 juration, and the declarations and affirmations to the effect
 of those oaths, and all other oaths, affirmations, and declara-
 tions now required from voters, save and except the oath or
 affirmation against bribery; and each of the persons so ap-
 pointed is to have a separate booth or place to which the
 voters may have access without interrupting the poll, and
 to administer the above-mentioned oaths, &c. to all persons
 claiming a right to vote, who apply to him for that purpose,
 and to give a certificate of the voters having taken such
 oaths, &c. and on production of that certificate, the voter is
 to be permitted to poll, as if he had taken the oaths, &c.
 before the returning officer, &c. If this bill should pass
 into a law, before this book is published, it may be added
 by way of appendix.

*

“ lings,

“ lings, over and above all rents and Freeholders
 “ charges payable out of or in respect of oath, as now
 “ the same; and that you have been in taken.
 “ the actual possession or receipt of the
 “ rents and profits thereof, for your own
 “ use, above twelve calendar months, or
 “ that the same came to you, within the
 “ time aforesaid, by descent, marriage,
 “ marriage settlement, devise, or promo-
 “ tion to a benefice in a church, or by
 “ promotion to an office; and that such
 “ freehold estate has not been granted or
 “ made to you fraudulently, on purpose
 “ to qualify you to give your vote; and
 “ that the place of your abode is at
 “ in and that you are twenty-one
 “ years of age, as you believe; and that
 “ you have not been polled before at
 “ this election.”

Before a freeholder is admitted to poll, he Oaths of al-
 may be required to take the oaths, or subscribe legiance and
 the declarations, hereafter mentioned. By the supremacy.
 19th section of the 7 and 8 W. III. c. 27. s. 19:
 no person who shall refuse to take the oaths
 directed to be taken by the 1 W. and M. st. 1.
 c. 18. (i. e. the oaths of allegiance and supre-
 macy) or, being quakers, shall refuse to subscribe
 the declaration of fidelity directed by 1 W. and

U

M.

Oaths of al-
legiance and
supremacy.

M. ft. 1. c. 18. “ (which oaths and subscription
“ respectively the sheriff or chief officer * taking
“ the poll at any election of members to serve
“ in parliament, *at the request of any one of the*
“ *candidates*, are hereby impowered and required
“ to administer) shall be admitted to give any
“ vote for the election of any knight of the
“ shire, citizen, burghers, or baron of the cinque
“ ports, to serve in parliament.”

The oaths of allegiance and supremacy, as altered and now taken by virtue of the 1 Geo. ft. 2. c. 13. f. 1. are as follows.

“ I A. B. do sincerely promise and swear,
“ that I will be faithful, and bear true
“ allegiance to his majesty king George.
“ So help me GOD.”

“ I A. B. do swear, that I do from my
“ heart abhor, detest, and abjure, as
“ impious and heretical, that damnable
“ doctrine and position, that princes ex-
“ communicated, or deprived by the
“ pope, or any authority of the see of
“ Rome, may be deposed or murdered
“ by their subjects, or any other whatso-

* See note at pages 287, 288.

“ ever;

“ ever ; and I do declare, that no fo-
 “ reign prince, person, prelate, state, or
 “ potentate, hath, or ought to have, any
 “ power, jurisdiction, superiority, pre-
 “ eminence, or authority, ecclesiastical
 “ or spiritual, within this realm.
 “ So help me GOD.”

Oaths of al-
 legiance and
 supremacy.

The following is the declaration of fidelity
 required to be taken by Quakers, as altered
 by the 8 Geo. c. 6. s. 1.

Declaration
 of fidelity.

“ I A. B. do solemnly and sincerely pro-
 “ mise and declare, that I will be true
 “ and faithful to king George ; and do
 “ solemnly, sincerely, and truly profess,
 “ testify, and declare, that I do from
 “ my heart abhor, detest, and renounce,
 “ as impious and heretical, that wicked
 “ doctrine and position, that princes ex-
 “ communicated, or deprived by the
 “ pope, or any authority of the see of
 “ Rome, may be deposed or murdered
 “ by their subjects, or any other whatso-
 “ ever. And I do declare, that no fo-
 “ reign prince, person, prelate, state, or
 “ potentate, hath, or ought to have, any
 “ power, jurisdiction, superiority, pre-
 “ eminence,

Declaration
of fidelity.

“ eminence, or authority, ecclesiastical
“ or spiritual, within this realm.”

Oath of ab-
juration.

By the 6th Ann. c. 23. s. 13. it is enacted, that “ every person who shall refuse to take the
“ oath” (of abjuration) “ last hereinbefore re-
“ cited, or, being a Quaker, shall refuse to de-
“ clare the effect thereof upon his solemn affir-
“ mation as directed by” 7 and 8 W. III. c. 34.
“ (which oath or declaration the sheriff, president
“ of the meeting, or chief officer taking the
“ poll * at any election of members to serve
“ in the House of Commons for any place in
“ Great Britain, or commissioners for chusing
“ burgesses for any place in Scotland, at the
“ request of any candidate, or other person present
“ at such election, are hereby required and im-
“ powered to administer) shall not be capable
“ of giving any vote for the election of any such
“ member to serve in the House of Commons
“ for any place in Great Britain, or commis-
“ sioner to chuse a burgess for any place in
“ Scotland.”

The oath of abjuration alluded to in the above-mentioned clause, was altered by the 1 Geo. ft. 2. c. 13. s. 1. and upon the death of the Pretender, was again altered by the 6 Geo. III. c. 5. s. 1. and is now taken in the following form:

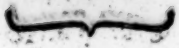
* See note at pages 287, 288.

“ I A. B.

“ I A. B. do truly and sincerely acknow-
“ ledge, profess, testify, and declare, in
“ my conscience, before God and the
“ world, that our sovereign lord king
“ George is lawful and rightful king of
“ this realm, and also all other his ma-
“ jesty’s dominions, and countries there-
“ unto belonging. And I do solemnly
“ and sincerely declare, that I do be-
“ lieve in my conscience, that not any
“ of the descendants of the person who
“ pretended to be prince of Wales,
“ during the life of the late king James,
“ and since his decease pretended to
“ be, and took upon himself the stile
“ and title of king of England, by the
“ name of James the Third, or of
“ Scotland, by the name of James the
“ Eighth, or the stile and title of king
“ of Great Britain, hath not any right or
“ title whatsoever to the crown of this
“ realm, or any other the dominions there-
“ unto belonging; and I do renounce,
“ refuse, and abjure any allegiance or obe-
“ dience to any of them. And I do swear,
“ that I will bear faith and true allegi-
“ ance to his majesty king George, and
“ him will defend, to the utmost of my
“ power, against all traiterous conspi-
“ racies and attempts whatsoever, which

Oath of abju-
ration.

Oath of abju-
ration.



“ shall be made against his person,
 “ crown, or dignity ; and I will do my
 “ utmost endeavour to disclose and make
 “ known to his majesty and his succes-
 “ sors, all treasons and traiterous con-
 “ spiracies which I shall know to be
 “ against him, or any of them. And I do
 “ faithfully promise, to the utmost of
 “ my power, to support, maintain, and
 “ defend the succession of the crown
 “ against the descendants of the said
 “ James, and all other persons what-
 “ soever ; which succession, by an act
 “ intituled, *An act for the further limi-*
 “ *tation of the crown, and better secur-*
 “ *ing the rights and liberties of the sub-*
 “ *ject*, is and stands limited to the prin-
 “ cess Sophia electress and dutchess
 “ dowager of Hanover, and the heirs of
 “ her body, being protestants. And all
 “ these things I do plainly and sincerely
 “ acknowledge and swear, according to
 “ these express words by me spoken,
 “ and according to the plain common
 “ sense and understanding of the same
 “ words, without any equivocation, men-
 “ tal evasion, or secret reservation what-
 “ soever ; and I do make this recogni-
 “ tion, acknowledgment, abjuration, re-
 “ nunciation, and promise, heartily, wil-
 “ lingly,

“lingly, and truly, upon the true faith
“of a Christian.

Oath of abju-
ration.

Founded on the act of the 7 and 8 W. III. 16 Journ.
c. 34. was the case of Westminster, 16 Decem- P. 49.
ber 1708, where it was resolved (165 to 154)
“that Mr. John Huggins, high-bailiff of this
“city at the late election of citizens to serve in
“this present parliament for this city, has, in
“defiance of the laws, arbitrarily and illegally
“refused to tender the oath of abjuration when
“required so to do, and thereby is guilty of a
“high crime and misdemeanor;” and for this
offence he was ordered to be committed to New-
gate (155 to 154). And in the petition against
the election for the county of Cardigan, 18th Ib. p. 267.
January, 1709, it was complained that some
were admitted to poll, that had not taken the
abjuration oath, though thereto required; and it
was proved that Mr. Oliver Howell, a reputed
nonjuror, coming to poll, the petitioner desired
the sheriff to administer the abjuration oath to
him, before he was allowed to poll; but he re-
fused, saying, he knew no law which enjoined
him to do it, and Mr. Howell polled; and when
the act of parliament was shewn to him respect-
ing the oath, he said he would consider of it.

The form of affirmation to be taken by
Quakers, instead of the oath of abjuration, not

Affirmation
instead of the
oath of abju-
ration.

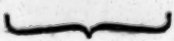
having undergone any alteration still continues in the following terms given in the 8 Geo. c. 6. s. 1. to renounce the Pretender, *who is dead*, and not his descendants ;

“ I A. B. do solemnly, sincerely, and truly
“ acknowledge, profess, testify, and de-
“ clare, that king George is lawful and
“ rightful king of this realm, and of all
“ other his dominions and countries
“ thereunto belonging. And I do so-
“ lemnly and sincerely declare, that I
“ do believe the person pretended to be
“ the prince of Wales, during the life
“ of the late king James, and since his
“ decease pretending to be, and taking
“ upon himself the stile and title of king
“ of England, by the name of James the
“ Third, or of Scotland by the name of
“ James the Eighth, or the stile and title
“ of king of Great Britain, hath not
“ any right or title whatsoever to the
“ crown of this realm, nor any other the
“ dominions thereunto belonging ; and
“ I do renounce and refuse any allegi-
“ ance or obedience to him. And I do
“ solemnly promise, that I will be true
“ and faithful, and bear true allegiance
“ to king George, and to him will be
“ faithful against all traiterous conspira-
“ cies

“cies and attempts whatsoever, which
“shall be made against his person, crown,
“or dignity. And I will do my best
“endeavour to disclose and make known
“to king George, and his successors, all
“treasons and traiterous conspiracies
“which I shall know to be made against
“him, or any of them. And I will be true
“and faithful to the succession of the
“crown against him the said James,
“and all other persons whatsoever, as
“the same is and stands settled by an
“act, intituled, *An act declaring the
“rights and liberties of the subjects, and
“settling the succession of the crown to the
“late queen Anne, and the heirs of her
“body, being protestants, and as the same
“by one other act, intituled, An act for
“the further limitation of the crown, and
“better securing the rights and liberties of
“the subject, is, and stands settled and
“entailed, after the decease of the said
“late queen, and for default of issue of
“the said late queen, to the late princess
“Sophia, electress and dutchess dowager of Hanover, and the heirs of her
“body, being protestants. And all
“these things I do plainly and sincerely
“acknowledge, promise, and declare, ac-
“cording*

Affirmation
instead of the
oath of abju-
ration.

Affirmation
instead of the
oath of abju-
ration.



“ cording to these express words by me
“ spoken, and according to the plain
“ and common sense and understanding
“ of the same words, without any equi-
“ vocation, mental evasion, or secret re-
“ servation whatsoever; and I do make
“ this recognition, acknowledgment, re-
“ nunciation, and promise, heartily, wil-
“ lingly, and truly.”

Bribery oath.

To secure the independence of electors, and prevent any corrupt or undue influence from operating upon their suffrages, the 2 Geo. II. c. 24. s. 1. enacts, that “ upon every election
“ of any member or members to serve for the
“ commons in parliament, every freeholder, ci-
“ tizen, freeman, burgess, or person having or
“ claiming to have a right to vote, or be
“ polled, at such election, shall, before he
“ is admitted to poll at the same election, take
“ the following oath (or, being one of the
“ people called Quakers, shall make the solemn
“ affirmation appointed for Quakers) in case the
“ same shall be demanded *by either of the candi-*
“ *dates, or of any two of the electors;* (that is to
“ say)

“ I A. B. do swear (*or, being one of the peo-*
“ *ple called Quakers, I A. B. do so-*
“ *lemnly affirm*) I have not received,
“ or

“ or had by myself, or any person what-
“ soever in trust for me, or for my use
“ and benefit, directly or indirectly, any
“ sum or sums of money, office, place,
“ or employment, gift, or reward, or any
“ promise or security for any money, of-
“ fice, employment, or gift, in order to
“ give my vote at this election; and that
“ I have not been before polled at this
“ election.”

Bribery oath.

Which oath or affirmation the officer or officers presiding or taking the poll at such election*, is and are impowered and required to administer *gratis*, if demanded as aforesaid, upon pain to forfeit 50*l.* to any person that shall sue for the same, with full costs; and no person shall be admitted to poll till he has taken and repeated the said oath in a public manner, in case the same shall be demanded as aforesaid, before the returning officer, or such others as shall be legally deputed by him. And by sect. 2. the returning officer admitting any person to be polled, without taking such oath or affirmation, if demanded as aforesaid, or if any person shall vote or poll without having first taken the oath, or, if a Quaker, having made his affirmation as aforesaid, if demanded, they shall each forfeit

* See note at pages 287, 288.

Bribery oath. 100 *l.* respectively for each offence, to be recovered as aforesaid, with full costs.

Gloucester,
p. 30.

It was resolved *nem. con.* in the Gloucestershire committee, in the case of one William Ball, who had refused to take the bribery oath when he first came to poll, and upon tendering himself afterwards to take the oath, had been rejected, that he might be permitted to take the oath, and vote, *at any time* during the poll.

22 Journ.
p. 447.

When a person, entitled to vote, cannot repeat the bribery oath in English, but is ready to take it in French, his vote ought not, as it should seem, to be refused. Southampton, 3d April, 1735.—Evidence was produced, that the mayor had refused the vote of one *Nesole*, because he was deaf, and could not repeat the bribery oath in English, though a gentleman, who spoke to him in French, then declared that he was ready to take it in French.

Agreement
of parties.

Glanville,
p. 108.
Pa. 239.

No agreement or consent of parties can alter the right of election. It was determined, in the case of Cirencester, 21st May, 1624, before cited, that the agreement of competitors, or any others, cannot alter the law, or make an election by freeholders only lawful, where the same ought to have been by all the inhabitants, householders, and tenants; and this has been ever since considered as the settled law of parliament. And therefore what was done at the election for the county

county of Brecknock, 22d Feb. 1695, where the qualifications of the electors were settled between the candidates before the election, and it was agreed, that those who had leases (which must mean chattel leases) and Quakers, who could make out their estates, but, as the law then stood, were excluded because they would not take the oaths in the common form, was clearly illegal.

Agreement
of parties.

11 Journ.
p. 463.

In order as well to enable the sheriffs and other returning officers to perform their duty, as to ascertain the rights of the voters, the 7 & 8 W. III. c. 7. s. 1. prohibiting all false and double returns, enacts, that “ in case that any
“ person or persons shall return any member to
“ serve in parliament for any county, city,
“ borough, cinque port, or place, contrary to the
“ last determination in the House of Commons
“ of the right of election in such county, city,
“ borough, cinque port, or place, that such re-
“ turn so made shall and is hereby adjudged to
“ be a false return.” And by section 2d, returning officers, wilfully making false returns, are liable to pay double the damages sustained by the party grieved.

Last deter-
mination.

It should seem, that besides the remedy given by this statute to the party, in case the returning officer makes a false return, contrary to the last determination of the House of Commons, the House will also punish him for his offence against

*

its

Last deter-
mination.

14 Journ.

P. 74.

its privileges. St. Ives, 8th December, 1702.—
“ Resolved, that Mr. John Hicks, mayor of the
“ said borough of St. Ives, is guilty of making
“ a false return of a member to serve in parlia-
“ ment for the said borough of St. Ives, contrary
“ to the last determination in parliament.” And
he was ordered to be taken into custody of the
serjeant at arms.

And the 2 Geo. II. c. 24. s. 4. in still stronger
expressions, enacts, that “ such votes shall be
“ deemed to be legal, which have been so de-
“ clared by the last determination in the House
“ of Commons; which last determination con-
“ cerning any county, shire, city, borough,
“ cinque port, or place, shall be final to all in-
“ tents and purposes whatsoever, any usage to
“ the contrary notwithstanding.”

The right of voting for counties not depend-
ing, as in the case of boroughs, upon particular
local customs, but upon the general law of the
land, it is not to be expected that there should
be many last determinations of the House con-
cerning it. Disputes may, however, arise as to
the boundaries of counties, and districts, which
were originally part of a county, may have been
severed from it; and in such cases it may be
necessary for the House of Commons, or a select
committee, to determine upon the right of vot-
ing for freeholds situate within the disputed
limits.

limits. Thus, in the case of Yorkshire, 9th March, 1735, it was proposed, on the part of the petitioners, to disqualify one William Stothard, who had voted in right of a freehold at Acomb, in the hundred or wapentake of Ainsty, within the county of the city of York. In order to disqualify him, a witness was examined to prove these facts, and the usage as to persons voting for freeholds lying within the said hundred or wapentake. The sitting member produced a copy of the record of letters patent, granted by King Hen. VI. the 11th day of February, in the 27th year of his reign, to the mayor and citizens of the city of York, reciting, “ that the said city,
“ the suburbs and precincts thereof, was then a
“ county by itself, divided and separated from
“ the county of York, and called the county of
“ the city of York; and that the mayor and
“ citizens of the said city were bailiffs of, and in
“ the hundred or wapentake of, *Ainsty*; and grant-
“ ing to them, and their successors, that the said
“ hundred or wapentake, with the appurtenances,
“ should be annexed and united to the county of
“ the said city, and be parcel thereof; and that
“ the said city, suburbs, and precinct, hundred,
“ or wapentake, and each of them, with their
“ appurtenances, and every thing in them, and
“ each of them, contained, except the Castle of
“ York, the towers, fosses, and ditches, to the
“ said

Last deter-
mination.22 Journ.
p. 622.

Last deter-
mination.

“ said castle belonging, be the county of the said
 “ city, separated and divided from the county of
 “ York; saving always to the church of York,
 “ and the archbishop, dean, and chapter thereof,
 “ and every other community, spiritual and
 “ temporal, and all and singular other persons,
 “ all kind of franchises, privileges, rights, com-
 “ modities, and customs, to them, or any of them,
 “ of right belonging.” The House resolved,
 “ that persons, whose freeholds lie within that
 “ part of the county of the city of York which
 “ is commonly called the *Ainsty*, have a right to
 “ vote for knights of the shire for the county of
 “ York.” This resolution is now as binding
 on the right of election for that county, as if
 an act of parliament had been expressly made
 for that purpose.

The last determination thus made final, and
 by which the conduct of the returning officer
 was to be regulated, was the last determination
 of *the House of Commons*, and not of any com-
 mittee; and the 10 Geo. III. c. 16. (Grenville’s
 act) which established the select committee for
 trying controverted elections, did not make its
 decisions upon the right of voting final. But
 the 28 Geo. III. c. 52. has in some degree
 remedied this defect, by enacting, in the 25th
 section, that whenever any select committee, ap-
 pointed to try the merits of any petition, “ shall
 “ be

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mination.

“ be of opinion that the merits of such petition
“ do wholly, or in part, depend on any question
“ or questions which shall be before them, re-
“ specting the right of election for the county,
“ city, borough, district of burghs, or place to
“ which such petition shall relate, or respecting
“ the right of chusing, nominating, or appoint-
“ ing the returning officer or returning officers,
“ who is or are to make return of such election,
“ the said committee, in such case, shall require
“ the counsel or agents for the several parties,
“ or, if there shall be none such before them,
“ shall then require the parties themselves to
“ deliver to the clerk of the said committee,
“ statements in writing of the right of election,
“ or of chusing, nominating, or appointing re-
“ turning officers, for which they respectively
“ contend; and the committee shall come to
“ distinct resolutions on such statements; and
“ shall, at the same time that they report to the
“ House their final determination on the merits
“ of such petition, also report to the House such
“ statement or statements, together with their
“ judgment with respect thereto; and such report
“ shall thereupon be entered in the Journals of
“ the House, and notice thereof shall be sent by
“ the Speaker to the sheriff, or other returning
“ officer, of the place to which the same shall re-
“ late; and a true copy of such notice shall, by
X “ such

Laſt deter-
mination.

“ ſuch ſheriff, or other returning officer, be
“ forthwith affixed to the doors of the County-
“ Hall or Town-Hall, or of the pariſh church
“ neareſt to the place where ſuch election has
“ uſually been held; and ſuch notice ſhall alſo
“ be inſerted, by order of the Speaker, in the
“ next London Gazette.”

And, by the 26th ſection, it is enacted, “ that
“ it ſhall and may be lawful for any perſon or
“ perſons, at any time within twelve calendar
“ months after the day on which ſuch report
“ ſhall have been made to the Houſe, or within
“ fourteen days after the day of the commence-
“ ment of the next ſeſſion of parliament after
“ that in which ſuch report ſhall have been
“ made to the Houſe, to petition the Houſe to
“ be admitted as a party or parties to oppoſe
“ that right of election, or of chuſing, nominat-
“ ing, or appointing the returning officer or re-
“ turning officers, who is or are to make return
“ of ſuch election, which ſhall have been deemed
“ valid in the judgment of ſuch committee.”

Section 27th enacts, “ That if no ſuch peti-
“ tion ſhall be ſo preſented, within the time
“ above limited for preſenting the ſame, the ſaid
“ judgment of ſuch committee, on ſuch queſtion
“ or queſtions, ſhall be held and taken to be final
“ and concluſive in all ſubſequent elections of
“ members of parliament for that place to which
“ the

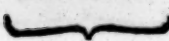
“ the same shall relate, and to all intents and
“ purposes whatsoever, any usage to the contrary
“ notwithstanding.”

Last deter-
mination.

The 28th section provides, that “ whenever
“ any such petition shall be so presented, a day
“ and hour shall be appointed by the House for
“ taking the same into consideration, so that the
“ space of forty days at the least shall always
“ intervene between the day of presenting such
“ petition and the day appointed by the House
“ for taking the same into consideration; and
“ notice of such day and hour shall be inserted,
“ by order of the Speaker, in the next London
“ Gazette, and shall also be sent by him to the
“ sheriff, or other returning officer, for the place
“ to which such petition shall relate; and a true
“ copy of such notice shall, by the said sheriff,
“ or other returning officer, be forthwith affixed
“ to the doors of the County-Hall or Town-
“ Hall, or of the parish church nearest to the
“ place where such election has usually been
“ held.”

Section 29th enacts, “ That it shall and may
“ be lawful for any person or persons, at any
“ time before the day so appointed for taking
“ such petition into consideration, to petition the
“ House to be admitted as a party or parties to
“ defend such right of election, or of choosing,
“ nominating, or appointing the returning of-

**Last deter-
mination.**



“ ficer or returning officers, and such person or
“ persons shall thereupon be so admitted, and
“ shall be considered as such to all intents and
“ purposes whatever.”

By section 30th, it is enacted, “ That at the
“ hour appointed by the House for taking such
“ petition into consideration, the House shall
“ proceed to appoint a select committee to try
“ the merits thereof, according to the directions
“ of the above-recited acts, and of this act; and
“ such select committee shall be sworn to try and
“ determine the merits of such petition, so far as
“ the same relate to any question or questions
“ respecting the right of election for the place to
“ which the petition shall relate, or respecting
“ the right of appointing, nominating, or chuf-
“ ing the returning officer or returning officers
“ who are to make return of such election; and
“ the determination of such committee, on such
“ question or questions, shall be entered on the
“ Journals of the House, and shall be held and
“ taken to be final and conclusive in all sub-
“ sequent elections of members of parliament for
“ that place to which the same shall relate, and
“ to all intents and purposes whatever, any usage
“ to the contrary notwithstanding.”

The 31st section recites, that “ whereas it is,
“ amongst other things, enacted, by an act passed
“ in the second year of the reign of his late Ma-
“ jesty

“ jesty King George the Second, intituled, An
 “ act for the more effectual preventing bribery
 “ and corruption in the election of members to
 “ serve in parliament, that such votes shall be
 “ deemed to be legal, which have been so de-
 “ clared by the last determination in the House
 “ of Commons; which last determination con-
 “ cerning any county, shire, city, borough,
 “ cinque port, or place, shall be final to all in-
 “ tents and purposes whatever, any usage to the
 “ contrary notwithstanding; be it enacted, that
 “ so much of the first act as is above recited,
 “ shall be, and the same is hereby repealed, in so
 “ far only as the same relates, or might be con-
 “ strued to relate, to any such determination to
 “ be made in the House of Commons subsequent
 “ to the passing of this act.”

Last deter-
 mination.

In the course of taking the poll, it has been much canvassed, whether the sheriff acts in a *judicial* or *ministerial* capacity. And each side has the sanction of names of such high authority, that I hazard the following observations with diffidence.

We are told by Whitelocke, that the writ of summons to parliament is of that sort called *writs* or *letters of message*; and in a passage already cited he says, that the sheriff acts as a ministerial officer in the execution of it. At his county

Sheriff mi-
 nisterial.

1 Whitel.
 P. 357.

Pa. 4.

Sheriff ministerial.

court he was to proclaim the day and place of the meeting of the approaching parliament, and to return the members chosen by the suitors there assembled. As sheriff he had no right to intermeddle in the election; he could neither, by virtue of his office, nor from any authority given by the writ, propose a candidate, or vote for one. He generally determined the election by the view; if a poll was demanded, the view was abandoned, and it was his duty to count the electors present. In doing this, in the early period of our parliamentary history, he probably found no difficulty; the freeholders in the several counties were very few in number, and well known to each other; and if a stranger intruded, he would be instantly discovered, and passed by. The sheriff does not appear to have had authority, by the common law, to interrogate the voters themselves, or to examine witnesses as to their qualifications; nor could his decisions affect their rights. His duty here bore strong analogy to his duty when acting under the process of the courts of justice. If he was commanded to arrest a defendant, or to enforce appearance by distress, or to seize goods under a writ of execution, he was to beware that he did not subject himself to an action, by taking the person or goods of a stranger. Anciently no inconvenience might arise from this strictness; possession of a chattel was evidence of

the ownership; secret trusts were unknown, and every transfer, even of personal property, was made publicly in the inferior courts of justice, before witnesses appointed for that purpose, and the officers who presided, to whom generally the process of the superior courts was directed. Nor was it more difficult to know the landed qualifications of the few persons who appeared at the county court, than the property of the chattels which the sheriff was commanded to take into custody of the law. Possession of the land was also evidence of the property in it; and every alienation must have passed openly in the county court, before the sheriff himself.—Besides, if it is admitted that the election of knights of the shire belonged to the suitors of that court, and that as such they were also invested with judicial power in the decision of causes instituted there, the law imposed no heavier burden on the sheriff, by requiring him to number them, and declare for whom the majority had voted in case of an election, than he was in the constant habit of performing, when he collected their votes, and pronounced their judgment in a civil cause.

The statute of 8 Hen. VI. c. 7. made, I apprehend, no alteration in the general duty of the sheriff. The possession and ownership of the land were matters of public notoriety, resting in the personal knowledge of the sheriff himself;

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See the statement of this statute in p. 23.

Sheriff ministerial.

*My the Stat.
of D. Hen. 6.*

Dalton,
P. 333.

but how much a voter might expend by the year was a matter collateral to the property; and therefore, when the qualification of a voter was made to depend upon the value of his freehold, it was necessary to give the sheriff power to ascertain it. For this purpose he was authorized, when he thought it necessary, to examine every voter upon oath*, how much he might expend by the year. And so observes Dalton: "The sheriff is here made a judge in this case, to examine and judge of the ability of these choosers of the knights for the parliament." But even in this inquiry it may be doubted whether the sheriff had judicial power; for if the voter answered fully and unequivocally †, that

Pa. 247. 248.
240.

* That neither the sheriff, nor any other officer, could officially impose any oath upon electors, is clear from the cases of Dorsetshire, Yorkshire, and Cirencester, before cited. The case of Bristol, 20th December, 1680, is to the same effect. The mayor and sheriff of Bristol having imposed an oath upon each freeman, before he came to vote, in these words: "You shall swear that you are a freeman, and that you have not given your voice already," they were sent for in custody of the serjeant at arms. They absconded; and thereupon it was ordered (8th Jan. 1680) that an address should be made to his Majesty to issue a proclamation to apprehend them; but the parliament was prorogued on the next day, and was dissolved without meeting again.

† Perhaps some of my readers may discover a resemblance between the sheriff and commissioners of bankrupt in this

that he might expend 40s. by the year, it is by no means clear that he might be rejected because he was disbelieved. From the following cases it should rather seem, that after the voter had taken the oath, the sheriff could neither examine witnesses to contradict him, nor reject his suffrage.

Sheriff ministerial.

Berkshire, 22d December, 1690, it was proved, 10 Journ. P. 520.

that all that had polled had taken this oath; and, the persons themselves not being present, the committee resolved not to admit a verbal averment against an oath given by the sheriff to such freeholders, they not being present; but the House postponed the consideration of this resolution. Cambridgeshire, 12th February, 1693. 11 Journ. P. 92.

The committee, after a debate and a division, determined that they would admit evidence to unqualify those that swore themselves freeholders; and resolved, that the sitting member was not duly elected, and that the petitioner was duly elected; but the House disagreed. In the cases of Hertfordshire and Surrey, both of which were reported on the 16th of January, 1695, the 11 Journ. P. 393.

this respect, that they cannot commit a bankrupt, who fully and roundly, though falsely, swears to a fact in making a disclosure of his effects, though he is bound to answer to the *satisfaction* of the commissioners. Ex parte Pedley. Trin. 25. Geo. III. B. R. In making this *examination* it was held, in the case of Miller v. Seare and others, in C. B. E. 17 Geo. III. that their powers were ministerial only.

committee

Sheriff ministerial.

committee resolved, " that it is the opinion of
 " this committee, that evidence ought not to be
 " admitted to disqualify an elector, as no free-
 " holder, who at the election swore himself to be
 " a freeholder;" and the House agreed. If then
 the committee or House were not competent to
 examine evidence to contradict the oath of the
 voter, can it be supposed that the sheriff was?
 Was he invested with higher powers than the
 House of Commons? Or, so long as their autho-
 rity was even doubted*, would the sheriff dare to
 exercise it? We may then fairly infer, that, down
 to the 7 & 8 W. III. c. 25. which passed very
 soon after the last resolution, the sheriff was bound,
 by what the voter swore at the poll, to receive or
 reject his vote.

18 Journ.
 p. 190.

22 Journ.
 p. 593.

* This question was agitated in the following cases:—
 Bedfordshire, 28th June, 1715. " A motion being made,
 " and the question being put, that the counsel for the peti-
 " tioner be admitted to give parole evidence as to a per-
 " son's being no freeholder, who swore himself to be a
 " freeholder at the time of the election," it passed in the
 affirmative; and so did a resolution, couched nearly in the
 same terms, in the case of Yorkshire, 26th February, 1735.
 Of late years the House of Commons, and its committees,
 have admitted such evidence as of course, whenever the
 qualification of voters has been objected to. But, because
 the House of Commons, or a select committee, is not con-
 cluded by the freeholders oath, it does not follow that the
 sheriff is not.

The

The case of Yorkshire (1628) before cited, strongly shews that the sheriff originally acted only ministerially in taking the poll; for, though he might examine a voter how much he might expend by the year, it was there determined that he could not even ask his name.

Sheriff ministerial.

Pa. 275.

The office of a returning officer, at the common law, seems to have been pretty accurately described by counsel, in the case of Old Sarum, 11th December, 1705. It was disputed, whether the right to make the return was in the burgessees (in whom the right of voting lay) or in the bailiff of the manor; and it was contended, that the precept ought to be delivered to the bailiff, *who is the computer of votes.*

15 Journ.
p. 60.

By the 7 & 8 W. III. c. 25. it was no longer left discretionary in the sheriff to examine or not the voters to their landed qualifications; but, at the requisition of any of the candidates, who might be supposed to be more materially interested, he might be compelled to administer a stricter oath, called the freeholders oath. In administering it he acted ministerially, and therefore no alteration was made in his general duty. This oath has been altered and enlarged; and the sheriff is now obliged to administer it, when any candidate, or person entitled to vote, thinks fit to impose it; but he cannot, by virtue of his office, call upon any of the voters to take it. This oath appears evidently

Sheriff ministerial.

evidently to have been introduced not to assist the sheriff in the execution of his duty, but as a check upon him, to prevent "the evil practices" and irregular proceedings," mentioned in the preamble of the act; whereby, as well the freeholders in their right of election, as also the persons by them elected to be their representatives, had been greatly injured and abused. So that the sheriff might, for his own security, examine the voters by virtue of 8 Hen. VI. and the candidates, or other electors, to prevent his injuring them in their franchise, might insist upon the imposition of the freeholders oath.

2 L. Raym.
P. 938.

The nature of the office of a returning officer underwent a very serious discussion in the court of King's Bench, in the year 1703, when Lord Holt presided, in the great case of Ashby and White, which will be stated presently; and the difference of opinion which prevailed there was not a little remarkable. The judges differing in opinion, gave their judgments *seriatim*. Gould, J. thought the action did not lie; for two reasons: 1st, Because "the defendants" (that is, the returning officers, who had rejected the plaintiff's vote) "are judges of the thing, and act herein as

" judges. 2dly," &c. He afterwards said, "as to

" the first, the King's writ constitutes the defend-

" ant a judge in this case, and gives him power

" to allow or disallow the plaintiff's vote," &c.

Powys,

Powys, J. said, " I am of the same opinion, that
" no action lies against the defendant: 1st, Be-
" cause the defendant, as bailiff, is *quasi* a
" judge, and has a distinguishing power either to
" receive or refuse the votes of such as come to
" vote, and does preside in this affair, at the
" time of election, though his determination be
" not conclusive, but subject to the judgment of
" the parliament, where the plaintiff must take
" his remedy." *Powell*, J. who agreed that the
action did not lie, said: " I do not agree with
" my brothers upon their first reason, that the
" defendant is a judge. I do not understand
" what my brother *Powys* means, by saying, he
" is *quasi* a judge; surely he must be a judge,
" or no judge. The bailiff is not a judge, but
" only an officer or minister to execute the pre-
" cept." *Holt*, Ch. J. who differed from the
other judges, and thought the action might be
maintained, said: " My brother Gould thinks no
" action will lie against the defendant; because,
" as he says, he is a judge: my brother *Powys*
" indeed says, he is no judge, but *quasi* a judge;
" but my brother *Powell* is of opinion, that the
" defendant neither is a judge nor any thing
" like a judge; and that is true; for the de-
" fendant is only an officer to execute the pre-
" cept; i. e. only to give notice to the electors
" of the time and place of election, and to
" assemble

Sheriff mi-
nisterial.

Sheriff ministerial.

“ assemble them together, in order to elect, and
 “ upon the conclusion to cast up the poll, and
 “ declare which candidate has the majority.”

The opinion of Lord Chief Justice Holt, thus far supported by that of Mr. Justice Powell, was recognized by the House of Lords; and *the state of the case*, which they afterwards found it necessary to publish in justification of their decision on the writ of error, contains the following passage:

“ That the officer is only ministerial in this case,
 “ and not a judge, nor acting in a judicial capacity, is most plain; his business is only to
 “ execute the precept, to assemble the electors,
 “ to make the election, by receiving their votes,
 “ computing their numbers, declaring the election, and returning the persons elected. The
 “ sheriff, or other officer of a borough, is put to
 “ no difficulty in this case, but what is absolutely
 “ necessary in all cases. If an execution be
 “ against a man's goods, the sheriff must at his
 “ peril take notice what goods a man has.”

If the office of sheriff, in taking the poll, was merely ministerial at the common law, and when the House of Lords gave judgment, in 1703, in the case of Ashby and White, it may be necessary to examine what modern alterations have been made. By one act indeed, passed before 1703, viz.

Pa. 99. 100.

7 & 8 W. III. c. 25. it was enacted, that no more than one single voice *shall be admitted to vote* for
 one

one house or tenement. But the sheriff is armed with no powers to enforce this provision. By the assessment act, 20 Geo. III. c. 17. the clerk of the peace, upon notice from any of the candidates, is to attend with the duplicates at the election; for what purpose does not appear; but, as the act says no person *shall vote* who is not duly rated, it may be fairly inferred, that his attendance is required, that the candidates may, by a reference to the duplicates, prevent persons not rated from voting. This implies that the sheriff may reject them; and, as questions of *virtual* rating are found still to subsist, it may be the duty of the sheriff to decide upon them. So as to the registration of annuities, and perhaps in some other cases. But the judicial powers now frequently exercised by the sheriff at county elections, far exceed those which have been granted by any acts of parliament. He has taken upon himself, without scruple, to judge of all the various qualifications of electors; and, even after they have sworn to their being possessed of competent freeholds, has in some instances rejected their votes, upon the bare suggestions of persons not examined upon oath. The dispute between the two Houses of Parliament, and the division of the kingdom into parties, upon the case of Ashby and White, naturally tended to establish sheriffs in their *judicial* character; and the

Sheriff ministerial.

Pa. 120.

Pa. 145.

Sheriff ministerial.

the violent resolutions of the House of Commons*, denouncing vengeance against all who should commence actions, in which the right of voting could be brought to the determination of a court of law, effectually secured them in it. For a long series of years it has been exercised without molestation; and Mr. Justice Blackstone, speaking of the power and duty of the

* The House of Commons came to the following resolutions, on January 25th, 1703:

Resolved, That, according to the known laws and usage of parliament, it is the sole right of the Commons of England, in parliament assembled (except in cases otherwise provided for by act of parliament) to examine and determine all matters relating to the right of election of their own members.

Resolved, That, according to the known laws and usage of parliament, neither the qualification of any elector, nor the right of any person elected, is cognizable or determinable elsewhere than before the Commons of England, in parliament assembled, except in such cases as are specially provided for by act of parliament.

Resolved, That the examining and determining the qualification or right of any elector, or any person elected to serve in parliament, in any court of law, or elsewhere, than before the Commons of England, in parliament assembled (except in such cases as are specially provided for by act of parliament) will expose all mayors, bailiffs, and other officers, who are obliged to take the poll, and make a return thereupon, to multiplicity of actions, vexatious suits, and insupportable expences, and subject them to different and independent jurisdictions, and inconsistent determinations in the same case, without relief.

Resolved,

the sheriff, says, " These are either as a *judge*,
 " as the keeper of the King's peace, as a minis- Sheriff mi-
 " terial officer of the superior courts of justice, or nisterial.
 " as the King's bailiff. In his *judicial* capacity, 1 Comm.
 " he is to hear and determine all causes of 40s. P. 343.
 " value in his county court—*he is likewise to*
 " *decide the elections of knights of the shire*, of
 " coroners, and of verderors—to *judge of the*

Resolved, That Matthew Ashby, having, in contempt of the jurisdiction of this House, commenced and prosecuted an action at common law, against William White, and others, the constables of Ailsbury, for not receiving his vote at an election of burgesses to serve in parliament for the said borough of Ailsbury, is guilty of a breach of the privilege of this House.

Resolved, That whoever shall presume to commence or prosecute any action, indictment, or information, which shall bring the right of the electors, or persons elected to serve in parliament, to the determination of any other jurisdiction than that of the House of Commons, except in cases specially provided for by act of parliament, such person or persons, and all attornies, solicitors, counsellors, and serjeants at law, soliciting, prosecuting, or pleading in any such case, are guilty of a high breach of the privilege of this House.

Ordered, That the said resolutions be fixed upon Westminster-Hall gate, signed by the clerk.

In the next session, John Paty, and three others, who, after the above resolutions were made, had commenced similar actions against the constables, were voted guilty of a breach of privilege, and committed to Newgate; and Robert Mead, their attorney, was ordered into custody of the serjeant at arms.

Y

" *qualifications*

Sheriff ministerial.

“ *qualifications of voters, and to return such as he shall determine to be duly elected.* As the keeper “ of the King’s peace,” &c.

The inconveniences arising from this modern system are such as call loudly for the interference of the legislature. For let us suppose that a voter, who comes to poll, is objected to; he tenders his vote, answers all the questions which by law he is compellable to answer, and declares his readiness to take the necessary oaths. Is the sheriff to reject his vote upon the *ex parte* suggestion of the bystanders? or is he to hear witnesses on both sides? View the proceeding in any light, it can only be a mockery of justice. The sheriff can neither compel persons to attend as witnesses, nor, if they do attend, to give evidence before him. But suppose, as has been done at some elections, the sheriff should permit a voter to be objected to, *after* he has taken the freeholders oath, is the testimony of any persons, not given under that solemn sanction, to be set against it? And after all, is the voter to be deprived of his franchise, because, not having notice that his vote would be objected to, he cannot be prepared to contradict witnesses, who shew a hostile disposition by appearing voluntarily against him? The common law of England has in no other instance left the administration of justice in a state so crippled and imperfect.

The

The case of *Ashby and White* was an action brought in the court of King's Bench, by a person entitled to vote at the election of members to serve in parliament for the borough of Aylesbury, against the constables, who are the returning officers, for rejecting his vote. The declaration stated, that on the 26th of November, in the 12th year of William the Third, a writ for summoning a parliament, to be holden at Westminster, on the 6th of February, was issued to the sheriff of the county of Bucks; that on the 29th of December it was delivered to the sheriff; that on the 30th of the same December, he issued his precept to the defendants; and by virtue of that precept, they appointed the 6th day of January following for the election, on which day the burgesses were assembled for that purpose; and the plaintiff *ad tunc & ibidem existens burgenfis et inhabitans burgi prædicti et eleemosynas ibidem aut alibi ad tunc aut antea non recipiens sed debite qualificatus & intitulatus existens ad suffragium suum ad eligendum, &c.* tendered his vote, and required the defendants to receive the same; *iidem tamen W. W. &c. ad tunc et ibidem constabulari burgi prædicti existentes, præmissiorum non ignari, sed machinantes et fraudulenter et malitiose intendentes eundem Matthiam Ashby in hac parte damnificare, et de privilegio suo de et in præmissis prædictis impedire et totaliter frustrare, eundem M. A. suffragium*

Sheriff re-
jecting votes.

2 L. Rayn.
P. 938.

Sheriff re-
jecting votes.

fragium suum in ea parte dare adtunc et ibidem obstruxere et adtunc et ibidem penitus recusavere ac eundem M. A. suffragium suum pro eligendo duos burghenses pro burgo illo ad parliamentum prædictum dare permittendum, ac suffragium ipsius M. A. pro electione illa non receperunt neque allocaverunt, &c. The defendants pleaded not guilty, and the plaintiff had a verdict, with 5*l.* damages. A motion was afterwards made in the court of King's Bench, in arrest of judgment; and by three judges, *Gould, Powis, and Powell*, against Lord Chief Justice *Holt*, the judgment was arrested. A writ of error was brought in the House of Lords; and on the 14th of January, 1703, this judgment was reversed, and judgment given for the plaintiff, by 50 Lords against 16. *Trevor*, Chief Justice, and *Price*, Baron, coinciding in opinion with the three justices of the King's Bench. *Ward*, Chief Baron, and *Bury* and *Smith*, Barons, supporting the opinion of the Lord Chief Justice *Holt*. *Tracy* agreed clearly that an action lay, but doubted of this form of declaration. *Nevill* and *Blencowe* were absent. This decision gave great umbrage to the House of Commons; and, after both Houses had proceeded to great extremities, the Queen was obliged to put an end to the dispute by a prorogation, and then a dissolution, of the parliament.

From

From the arguments used at the bar, and the judgments delivered from the Bench, it is clear that when the motion was made in arrest of judgment, the single question before the court was, Whether an action would lie against a returning officer, for the mere obstruction of a voter in the exercise of his franchise, without any imputation of his having acted from malicious, or other improper motives? To that point only the arguments of Lord Chief Justice *Holt* were applied; and *Powell*, Justice, was of opinion, that the plaintiff here came too soon, for that *the action would lie after the parliament had determined that the plaintiff had a right to vote*, but not before.— When it came before the House of Lords, upon the writ of error, the question remained the same; and in the parliamentary cases no imputation of malice appears; indeed what is there alledged, shews that the returning officer had acted *bona fide*: it is stated, that “ some short time before, the
 “ overseers of the poor of Aylesbury warned the
 “ plaintiff out of the parish, as a poor indigent
 “ person, unless he would give security to save
 “ the parish harmless; and, for that purpose, they
 “ applied to the justices of the peace for an order
 “ to remove him; but while this matter was in
 “ agitation, the election for members came on;
 “ when the plaintiff, offering himself to be
 “ polled as a burger, duly qualified, the defend-

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 jecting votes.

2 L. Raym.
 P. 947.

Brown, vol. 1.
 P. 45.

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“ants thought proper to reject his vote, alledg-
“ing, that he was no settled inhabitant of the
“borough, and had never contributed either to
“church or poor.”

The violent proceedings of the House of Commons induced the Lords to publish a justification of their decision, drawn up, as supposed, by the Lord Chief Justice *Holt* himself; and in that, though they make use of other arguments, inapplicable to a case founded on malice only, they protect themselves under the mere formal words of the declaration, in the following terms:
“Nor is there any danger to an honest officer,
“that means to do his duty; for where there is
“a real doubt, touching the parties right of
“voting, and the officer makes use of the best
“means to be informed, and it is plain his mis-
“take arose from the difficulty of the case, and
“not from any malicious or partial design, no
“jury will find an officer guilty in such a case,
“nor can any court direct them to do it; *for it*
“*is the fraud and the malice that intitles the party*
“*to the action.* In this case, the defendants
“knew the plaintiff to be a burghers, and yet frau-
“dulently and maliciously hindered him from
“his right of voting; and justice must require
“that such an obstinate and unjust *ministerial*
“officer should not escape with indemnity.”

The

The fulminating resolutions of the House of Commons for a long time deterred persons from commencing actions, which might bring into question the qualifications of electors. But after the lapse of more than threescore years, some electors for the county of Pembroke, whose votes had been rejected, brought actions against the sheriff; and on the 9th of March, 1767, complaint was made to the House of Commons, Sheriff re-
jecting votes.
“ that, in breach of the privilege of this House,
“ Matthias Davids, clerk, William Colly, clerk,
“ and Alexander Thomas, gentleman, had brought
“ actions of trespass on the case against John
“ Merrick, Esq. late high sheriff of the county
“ of Pembroke, for refusing their votes at the
“ late election for a knight of the shire to serve
“ in this present parliament; and that Albany
“ Wallis and Samuel Cooper, attorneys at law,
“ and Thomas Watson, clerk in the Exchequer,
“ acted as attorneys in the said actions.” It was moved, that the matter of this complaint should be heard at the bar of the House upon that day three weeks; but a debate arising, the debate was adjourned.—16th March. It was ordered to be 31 Journ.
P. 211.
heard on the 6th of April; but “ the House
“ being informed that Matthias Davids, clerk,
“ had discontinued the said action of trespass,” it was ordered, that the complaint, so far as related to him, should not be proceeded upon; Ib. p. 229.

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31 Journ.
p. 279.

Ib. p. 292.

and all the other persons mentioned in the complaint were ordered to attend the House.—6th April. “A member present informed the House, “that he was authorized by the parties in prosecuting the several actions, to undertake to “the House, that the said actions should be discontinued; and the consideration of the matter “of the complaint was postponed.”—9th April. The same member informed the House, that the said actions were discontinued; and it was “resolved, that this House will not proceed to “hear the matter of complaint of the said actions “having been brought;” and the several persons, who had been ordered to attend, were discharged from their attendance.

Since these proceedings in the year 1767, which breathe a much more moderate spirit than those before alluded to, two cases have occurred, and have been allowed to pass without any notice from the House of Commons. The first was the case of *Sarjent and Milward*.—It was an action brought by a resident freeman of the town and port of Hastings, in the county of Suffex, not receiving alms, against the mayor, for refusing his vote for two barons to serve in parliament for that town, at the general election in March, 1784. The cause was tried at Lewes, before *Eyre*, Baron, at the Summer assizes, in 1785. The declaration was similar to that in the case of *Ashby*

2 Luders,
p. 248.

Ashby and White; the defendant was proved to have acted maliciously in the refusal of the plaintiff's vote, and a verdict was given for the plaintiff, with 200*l.* damages. A motion was made, in the court of Common Pleas, to arrest the judgment; but the defendant declined to argue it. And a writ of error being brought in the court of King's Bench, it was set down for argument in Easter Term, in the 26th of George the Third; but the court refused to hear any argument, declaring, that whatever their opinion might be, they thought themselves bound, upon the authority of the decision in the House of Lords, in the case of Ashby and White, to give judgment for the plaintiff; and therefore the judgment was affirmed. The defendant acquiesced, and the judgment of the court of King's Bench was suffered to remain unimpeached.

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The other case is of still more recent date, *2 Luders, P. 245.* *Drewe v. Colton.* It was an action brought against the mayor of Saltash, as returning officer, for having refused the vote of the plaintiff, a freeholder of a burgage tenement in that borough, at the election in 1786; the declaration was also in the same form as that in Ashby and White. The cause came on to be tried by a special jury, before Mr. Justice *Wilson*, at the Lent assizes for Cornwall, held at Launceston, March the 27th, 1787. The counsel for,

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for the plaintiff stated to the jury the history and constitution of the borough, deducing from thence the plaintiff's right to vote; but declared, at the same time, that he did not mean to charge the defendant with having acted from any malicious motives in his refusal of the vote. The defendant's counsel objected to the plaintiff's proceeding with his evidence, after he had admitted that the defendant had done nothing wilfully wrong, but had acted conformably to the usage of the last thirty years, and to three concurring decisions of the election committees; and contended, that the foundation of this action, and of all others against officers of the law, in the execution of their duty, was a *wilful* and *malicious* misfeasance.

The learned judge at first inclined to let the plaintiff proceed with his evidence; but, after a full hearing of all the counsel on both sides, he changed his opinion. He said, the statute of 7 & 8 Will. III. c. 7. which was made to prevent false returns, and gives an action to the party grieved, does not allow it to the candidate himself, unless the return be *wilfully* false; and it would be very inconsistent to suppose, when the party, who is the most interested in the act, and most injured by it, cannot recover damages, except it be wilful, that one much less aggrieved, and who has less interest in the same transaction, should yet be more favoured in the recovery

covery of damages; and he mentioned, for this purpose, the case of General Burgoyne against Moss, the mayor of Preston, which was an action for a false return, tried before Lord Bathurst; and the jury being of opinion, that, in the execution of his duty, he had acted according to the best of his judgment, and not maliciously, they gave a verdict for the defendant, to the satisfaction of the court. Mr. Justice *Wilson* also observed, that Lord Chief Justice *Holt*, in the report of the case of *Ashby and White*, in the King's Bench, endeavours to establish a different opinion, viz. that an action lies, generally, for the mere obstruction of the right; but that the decision of the House of Lords, upon that case, was founded on a different principle, viz. the wilfulness of the act; and that the same principle was enforced in the justification, which the House of Lords published of their conduct, which, it was supposed, was drawn up by the Chief Justice himself. He said, that Lord Chief Justice *Holt* stood single in this particular opinion*; but however he would, in deference to the authority of so great a name, direct the question to be put upon the record in the form of a special verdict, in order to have it solemnly argued and determined, if the leading

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* This seems to be a mistake; for Mr. Justice *Powell* thought the action would have lain, if the right had been previously determined in parliament. See pa. 325.

counsel

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counsel for the plaintiff would declare his own assent to this opinion of Lord *Holt*. This the counsel for the plaintiff declined. The plaintiff was nonsuited, and no steps were afterwards taken to set aside the nonsuit.

2 L. Raym.
P. 942.

In the case of *Ashby and White, Gould, Justice*, who thought that the action could not be maintained, intimated, that after the parliament had adjudged a person had a right of voting, an information might lie against the sheriff for refusing to receive his vote. But in the justification published by the House of Lords, it is expressly stated, that "the injured plaintiff, in this case, "has no other remedy beside this action; no "indictment lies, because it is a personal wrong "to the party, and no wrong to the public, "but only in the consequence of it, as an evil "example, which tends to the encouragement "of other such officers to commit the like transgressions."

In case the sheriff should wrongfully reject a vote, which has been regularly tendered in the proper booth, and there should be a petition against the election, such vote will not be lost, but will be added to the poll, as if it had been taken down when tendered. It is unnecessary to cite cases to prove this; upon every petition on a controverted election, it is the constant practice for the select committee (being by Grenville's act substituted

substituted for the House, or the committee of privileges) to add to, or strike off, such votes as they find necessary to correct the poll, and make it an exact list of all the qualified votes *tendered* at the election.

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Towards the close of the last century candidates at county elections not unfrequently requested sheriffs to examine all the voters indiscriminately upon oath, as to their qualifications, when they came to poll. This was the test imposed by the legislature, and had a considerable effect in the excluding of illegal votes. But popular elections for *boroughs*, where no such test was given, were attended with great difficulties; and the anxiety of candidates, and the zeal of their friends, frequently forced the returning officers to examine more minutely into the right of voting than could be done conveniently, without interrupting the poll. Hence arose the practice of reserving the consideration of disputed votes till the conclusion of the election, and of entering them conditionally on the poll, generally with, but sometimes without, a query annexed. This appears, from the earlier cases, to have been done *with the consent of the candidates and voters.*

Votes
queried.

Thus Abingdon, 26th May, 1688.—The poll was taken in writing, and it was agreed to admit all that tendered themselves, on condition of a scrutiny

10 Journ.
P. 123.

Votes
queried.

scrutiny of the scot and lot men afterwards; that scrutiny was afterwards gone into, and the numbers declared according to the amended poll. It was proved, that this practice had prevailed in the *six* preceding elections, or more.

10 Journ.
p. 406.

Colchester, 11th November, 1690.—The right of election was agreed to be in the freemen, not receiving alms. There were three candidates; the poll was taken promiscuously, and was to be scrutinized afterwards; the petitioner, being first on the poll, demanded a return, but the mayor refused till the scrutiny. The clerks books were sealed up, and delivered to the mayor, who sent to the petitioner to be present at the scrutiny, but he refused to come, upon which it was gone into without him; and at the conclusion of it, the petitioner had the smallest number of votes, and the other two were returned. The committee resolved the sitting members to be duly elected, and the House agreed.

Ib. p. 520.

Wareham, 22d December, 1690.—Nineteen of the petitioner's votes were queried, and five of Mr. Okeden's; and the petitioner refusing or neglecting to make good the voices queried upon his poll, the mayor struck them off on both sides, and so Mr. Okeden had the majority.

11 Journ.
p. 493.

Tregony, 5th March, 1695.—When the poll was cast up, the queries which had been made were examined, and those made out allowed on both

both sides, and the petitioner, as the witness thought, satisfied.

Votes
queried.

Reading, 24th November, 1699.—The petition states, that the three candidates severally appointed a person to give notice of such as they conceived had no right to poll, in order, if polled, to be queried and examined; but that the mayor forbade Edward Winchip, appointed by the petitioner, to give such notice, &c.

In one instance the returning officer, with consent of the candidates, submitted the poll to the

10 Journ.
P. 521.

revision of persons appointed by each party.—

Devizes, 22d December, 1690. The candidates

agreed that the poll should be scrutinized by two of the council, as they call it, and two gentlemen;

which was done accordingly.—And at Worcester, 7th February, 1693, it was agreed that all free-

11 Journ.
P. 83.

men should vote but those that took weekly or

monthly pensions, and to this the voters were

examined *upon oath*, that being the scrutiny agreed

upon. In both these cases, as well as in the fol-

lowing ones, it is clear that the returning officers

did not act merely on their own authority, but

with the consent of the candidates and voters.

Cumberland, 10th November, 1768.—The

32 Journ.
P. 27.

partiality of the sheriff, in many instances, at this

election, was stated in the petition; among the

rest, that some frivolous objections having been

made to some of the petitioner's voters, for want

of

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queried.

32 Journ.
p. 89.

of certain evidence of their title, he had directed the names of such voters to be entered upon the poll-book, with queries annexed, at the same time promising to receive the evidence in question, at some time before the return was made; but after the close of the poll, though such evidence was frequently tendered to him, both in private and in public, and though three days elapsed between the close of the poll and the return, he utterly refused to admit such evidence, and rejected those very votes, in breach of his said promise, solemnly and repeatedly given.—December 6th 1768. The petitioners having been heard, and this charge (as well as other parts of the petition) substantiated, their counsel were directed to confine themselves to the return. Evidence was produced on behalf of the sitting member, but the House resolved that the petitioner ought to have been returned.

Ibid. p. 361.

Cumberland, 6th April, 1769.—Sir Gilfred Lawson, the late high sheriff, being ordered to attend, evidence was produced to prove that he had made an undue return; and after he had made his defence, it was resolved, “ That it appeared
“ that Sir Gilfred Lawson, Baronet, late high
“ sheriff of the county of Cumberland, did, at
“ the last election of knights of the shire for the
“ said county, unduly return Sir James Lowther,
“ Baronet, contrary to the majority of votes
“ *received*

“ received by him upon the poll; and did, after
 “ the poll was closed, take upon himself to reject
 “ several votes, which had been received upon
 “ the poll in favour of Henry Fletcher, Esq;
 “ in order to create a majority in favour of
 “ Sir James Lowther, Baronet, without hearing
 “ counsel, or admitting evidence, in favour of the
 “ said votes, at the time of rejecting them, not-
 “ withstanding his promise to hear such counsel,
 “ and receive evidence in their support.” It was
 further resolved, that he had “ thereby acted par-
 “ tially and illegally, in manifest violation of the
 “ rights of the freeholders of the said county, and
 “ in breach of the privilege of this House.”—It
 was then ordered, that for his offence he should
 be taken into custody of the serjeant at arms; a
 motion that he should be committed to Newgate;
 instead thereof, was negatived, 113 to 60.—
 April 24th, a motion was made, but withdrawn;
 that he should be brought up and reprimanded.

Votes
 queried.

32 Journ.
 P. 434.

In the case of Bedfordshire, 1784, several votes
 were entered upon the poll book, with queries
 annexed; and at the closing of the poll, the sheriff
 adjourned the county court, in order (among
 other reasons) to discuss the queried votes, and
 this was not objected to;

1 Luders,
 P. 350. &c.

It has been disputed how far the sheriff, having
 admitted queried votes upon the poll, can of his
 own authority, and without the consent of the

Z

candidates

Votes
queried.

candidates or voters, afterwards strike them off. It has been contended, that, supposing he is a judicial officer, and has power to inquire into the legality of votes before he receives them; yet that having once admitted them on the poll, it is conclusive as against him, and his return must be made upon the numbers so admitted.

33 Journ.
p. 69.

New Shoreham, 17th December, 1770.—The select committee resolved, that Mr. Rumbold ought to have been returned; and that it appeared to the committee, that eighty-seven persons voted for Mr. Rumbold, thirty-seven for Mr. Purling, and four for Mr. James. That all but one that voted for Mr. Rumbold took the bribery oath before he polled; that Hugh Roberts, the returning officer, put queries to the names of 76 of the voters for Mr. Rumbold, at the time they gave their votes, and *immediately* at the close of the poll declared Mr. Purling duly elected. The committee also resolved, that the conduct of the returning officer, in taking the poll, and making the return, was illegal.—February 12th, 1771.

Ib. p. 157.

The House proceeded to hear the above charges against the returning officer, and “ resolved, that
“ Hugh Roberts, the late returning officer for
“ the borough of New Shoreham, having, at the
“ last election for the said borough, received
“ upon the poll 87 persons, who voted for Mr.
“ Rumbold,

“ Rumbold, who all, except one, had taken the
 “ bribery oath, and 37 who voted for Mr. Pur-
 “ ling, and having, immediately on the close of
 “ the poll, declared Mr. Purling duly elected,
 “ and returned him accordingly, hath thereby
 “ acted illegally, and in breach of the privilege
 “ of this House.” And the said Hugh Roberts
 was, for this offence, ordered to be taken into
 custody of the serjeant at arms.

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 queried.

February 14th, 1771.—The speaker (Sir
 Fletcher Norton) reprimanded Hugh Roberts,
 at the bar of the House, upon his knees; and in
 his speech upon that occasion, printed by order
 of the House, were the following passages: “ You
 “ have said, that you did not receive the votes
 “ absolutely, but only admitted them to poll
 “ conditionally, and subject to future revision,
 “ as appears by the queries set against their
 “ names.

33 Journ.
 p. 162.

“ I think this circumstance alone, was it true,
 “ would not much avail you; for I have always
 “ been of opinion (although I do not know that
 “ the resolutions of the House have gone so
 “ far) that the practice of receiving votes with
 “ queries, by the mere authority of the returning
 “ officer, and without the consent of the parties,
 “ is illegal; I am sure it is dangerous; for, if once
 “ it be admitted by this House, that the return-
 “ ing officer has a right to receive votes upon

Votes
queried.

“ terms which are to subject them to his future
“ decision, after the poll is closed, and the num-
“ bers known, it will always be in the power of
“ that officer, so to manage the queried votes as
“ to return which of the candidates he pleases;
“ and if he is either an artful man himself, or
“ artfully assisted by others, he will also be able
“ so to do the business as to make it difficult to set
“ aside what he hath done, and more difficult to
“ punish him for doing it.

“ But your case does not afford you even this
“ excuse; for it has been proved, that, although
“ you reserved the queried votes for future dis-
“ cussion and reconsideration, you made your
“ return without either, as soon as the poll was
“ over, rejecting, as you declared, all those who
“ had voted for one of the candidates (which
“ amounted to a great majority of the whole) on
“ account, as you alledged, of corruption, not-
“ withstanding you had administered the oath
“ against bribery to all, except one, of those you
“ thought proper to reject.”

37 Journ.
P. 521.

Downton, 23d December, 1779.—Mr. Shafto,
in his petition, complained “ that H. Dench, the
“ returning officer, behaved very partially and
“ unfairly in the execution of his office, inasmuch
“ as, though he admitted on his poll the names
“ of those who voted for the petitioner, yet, con-
“ trary to the duty of his office, he put *queries* on
“ the

“ the greatest part of the votes he so received ;
 “ and, at the end of the poll, arbitrarily and ille-
 “ gally rejected them,” and unlawfully returned
 Mr. Bouverie*. When the cause came before
 the select committee (16th February, 1780) Mr.
 Shafto’s counsel, in opening the case, confined
 themselves to the charge against the returning
 officer, in order to obtain a decision in their favour
 upon the matter of the return, previous to their
 entering upon the merits of the election ; but the
 committee directed them to proceed to the merits
 of the election, and afterwards determined gene-
 rally in favour of the petitioner, without adding
 any particular resolution concerning the return.

Votes
 queried.

In general the object of putting a query to the
 name of a disputed voter was, that the returning
 officer might make inquiry into his right of voting,
 before he finally declared the numbers on the poll ;
 but it might also be affixed for other purposes.—

Thus Southampton, 17th March, 1695. It was 11 Journ.
 proved, that at former elections outliving bur- P. 518.
 gesses had been polled, but put down with a
 mark, to be tried upon any question *in parliament*.

And Cockermouth, 6th March, 1710. The pe- 16 Journ.
 titioner’s counsel insisted, that they ought to pro- P. 537.

* At the election there were for Shafto thirty-one votes,
 and for Bouverie eight ; and the returning officer had first
 queried, and then rejected, twenty-eight of Mr. Shafto’s
 votes.

Votes
queried.

ceed to qualify and disqualify only such votes as were queried upon the scrutiny; and the sitting member's counsel acquainting the House, that there were lists exchanged between the parties on the 24th of January last, of what votes each party would insist upon to disqualify, the House ordered, that the evidence should be confined to the votes queried at the election, and the lists mutually delivered on the 24th of January last.

Mistakes in
the poll.

Any mistake, or improper conduct of the sheriff or poll clerks, in conducting the poll, does not avoid the election, if in other respects there has been "a substantial and good election;" thus the admission of persons not having any right to vote, will not vitiate the proceedings, where all those who had a right were actually polled, and there is a clear majority of them, without including the invalid votes. A voter should be very careful that the poll clerk makes no mistake in entering his vote; for it is incumbent on the sheriff to be extremely jealous of every application afterwards to alter the poll book. The clerk is sworn to take down truly the votes, as they are given, and the entries are made under the inspection of persons appointed by the candidates themselves. After the election is finished, the poll books are the most natural and authentic evidence of the vote; and therefore, in case of
any

any mistake, it ought to be pointed out to the sheriff *immediately*, or at least before the numbers are declared. Mistakes in
the poll.

In the great case of *Ashby and White*, Mr. Justice Powell said, “ that if the plaintiff gives “ his vote for a candidate, that it is as effectual “ as if the officer writ it down; for it is his vote “ by the giving of it, and the officer cannot “ hinder him of it, and on a poll it must be a “ good vote, and must be allowed.” This observation was made by this learned judge, with a view to the case before him, viz. a *borough* election; but the principle is no less true when applied to *county* elections. It would be highly dangerous to the liberty of the subject, if the officer, by making a false entry, could deprive an elector of his vote, and so return a favourite candidate, contrary to the truth of the case, and against the votes of a majority. Even before cheque books were allowed, inspectors were appointed by the candidates to see that the clerks made no false entries in their poll books; and if no complaint was made during the election, it might fairly be presumed, that there was no mistake; and there could be little reason to apprehend foul play, because the books were authenticated, not only by the oath of the poll clerk, but the testimony of a friend of each candidate, appointed for the express purpose of inspecting his conduct,

2 L. Raym.
P. 949.

Mistakes in
the poll.

and seeing that every vote was regularly entered. —It should seem, however, that the legislature thought these precautions insufficient to prevent voters from being deprived of their most valuable franchise, through the default of a careless or corrupt officer; and therefore, by a subsequent statute, the inspector of every candidate was permitted to have a cheque book upon the book kept by each of the poll clerks. It is not easy to comprehend why a cheque book was allowed, unless it was with an express view to prevent errors, or correct them if they crept into the original poll. Upon looking into the cases in the Journals, *most of them* may be explained in this way; for it will be found, that, after inspectors were allowed, but before the institution of cheque books, the entry on the poll was generally* considered as conclusive, and the evidence, neither of the voter himself, nor of others, was admissible to prove there was a mistake; but in all the cases, except one, since cheque books were introduced, they, with other evidence, have

11 Journ.
p. 92.

* Cambridgeshire, 12th February, 1693 (which was before inspectors were appointed) evidence was permitted to contradict the sheriff's poll book, and even the evidence of the voter himself was deemed sufficient. At this election each candidate was allowed to have a poll book, as well as the sheriff's officers; but it does not appear that there was any disagreement between the books of the sheriff and the candidates.

been

been admitted to contradict the poll books, where the mistake was pointed out in reasonable time.

Mistakes in
the poll.

Rutland, 20th January, 1710.—One Samuel Freeman being offered to prove persons voting on the sitting member's behalf, who are entered on the sheriff's poll to have polled for the petitioner, the question being put, that Samuel Freeman be admitted to prove *his* voting *contrary to the poll then taken by the sheriff*, it passed in the negative.

16 Journ.
p. 463.

Bedfordshire, 14th July, 1715.—A witness being called, to prove that one William Reynold voted contrary to what appears by the sheriff's poll, which being objected to by the petitioner's counsel, and both parties being heard upon the question, that the counsel be admitted to examine Edward Kemp, to prove that William Reynold voted otherwise than he is put down in the sheriff's poll, it passed in the negative. And in the case of Southwark, 10th February, 1735, the same thing was attempted, the point again argued, the two foregoing cases referred to, and the House, *nemine contradicente*, passed the like resolution.

18 Journ.
p. 224.

22 Journ.
p. 554.

The case of Essex, 17th May, 1716, seems contradictory to the preceding ones.—The petitioners added three to their poll; one who voted for the petitioner, and was wrote down for the sitting member; another who voted for the petitioner,

18 Journ.
p. 447.

Mistakes in
the poll.

27 Journ.
P. 285.

and was set down for Mr. Middleton, who was dead; and another, who was undercast in the petitioner's poll.

Oxfordshire, 15th April, 1755, is the case before alluded to, as the only exception since the 18 Geo. II. The counsel for Lord Wenman and Sir James Dashwood, in order to rectify a mistake in an entry on the poll, in the description of a freehold for which a vote had been given for them, offered to produce one of the checque books kept by their inspector, together with the parole evidence of *several persons* present at the time when the voter was polled. The counsel on the other side objected to the admission of evidence to contradict the sheriff's poll. The point was fully argued; and upon putting the question, that the counsel be admitted to produce the above evidence to prove that the voter had voted for a freehold lying in a place different from that which is entered in the original poll book, and that he then declared the freehold for which he voted to be in the occupation of a different person from that which is also entered in the poll book, it passed in the negative.

¶ Luders,
P. 342.

In the Bedfordshire case, in 1784, it was observed, on the cases of Rutland and Bedfordshire, that they happened before checque books were allowed; that of Southwark was a *borough* election, and checque books are directed in counties

ties only, and besides, that case also was before the statute of 18 Geo. II; and that the best answer to the Oxfordshire resolution is, that the whole of that election was disputed with a degree of party violence, which did not allow much room for the operation of reason and justice, but, if it were not so, instances might be mentioned where resolutions, directly contrary to it, have passed in the House; and the Gloucestershire case*, in 1780, was cited. The case of Essex was not mentioned.

Mistakes in
the poll.

Pembrokehire, 22d February, 1770.—The checque clerks in the several booths were, after argument, examined to prove the number of freeholders and leaseholders who voted at the election, and to shew that the majority of freeholders was in favour of the petitioner.

32 Journ.
P. 721.

In the case of Gloucestershire, 1780, it was resolved, *nem. con.* “ that the counsel should not “ be at liberty to adduce evidence to *contradict* “ the descriptions or entries in the poll book;”

Gloucester,
P. 139.

* Bedfordshire, 1784.—One of the counsel for the petitioner mentioned to the committee, that a learned judge had, from his memory, informed him, that in an action against the sheriff of Buckinghamshire, for a false return of members for Marlow, tried many years ago before Mr. Justice Denison, in which a Mr. Moore was plaintiff, that judge had admitted the evidence of a checque clerk to contradict the poll; but the particular circumstances of the cause he could not state.

1 Luders,
P. 349.

but

Mistakes in
the poll.

Gloucester,
p. 177.

Ib. p. 162.
163.

Ib. p. 120.

but that they might adduce evidence to *explain* them; and therefore, where a voter had given in his freehold as in a different parish and hundred from that in which it actually lay, the committee would not allow evidence to shew that it lay in a different parish and hundred. Here it seems the checque book agreed with the poll book; but where the poll clerk had neglected to put the word *jurat*, opposite a voter's name, and the checque clerk was produced to prove he had been sworn, the same committee resolved, *nem. con.* that evidence be permitted to prove he was sworn to his freehold. Upon the principle, that the mistake of the poll clerk shall not deprive a voter of his franchise, the same committee determined, that where the poll clerk had admitted a person to vote for lands not included in the list in the booth where he polled, his vote should not be lost, though taken contrary to the terms of the statute. This is an instance of a mistake of a different nature from any yet mentioned, and so does not fall within the general rule; for here the agreement of the checque book with the poll book gives no security to the voter, and no authenticity to the entry; besides, no danger was likely to ensue from allowing such a mistake to be rectified, for it was apparent on the face of the books themselves, and notorious to the whole county.

The

The power of the sheriff, *during the poll*, to rectify mistakes in the poll books, and the evidence he ought to receive in proof of such mistakes, were questions much agitated in the case of the county of Bedford, in 1784, when the return was under consideration of the committee. The candidates were, the Earl of Upper Offory, the Hon. Mr. St. John, and Lord Ongley. At the close of the poll the numbers were, for Lord Offory, 1050; for Mr. St. John, 974; for Lord Ongley, 973. The two former were returned, and Lord Ongley petitioned against the *return* of Mr. St. John, on the ground that “the votes
“ of two persons who had voted for him, had
“ been entered in the poll book as given for the
“ two other candidates; and the vote of a third,
“ who had voted singly for the petitioner, was
“ not entered at all in the poll book. That the
“ mistake concerning the vote of William Lugsden, one of the two first, was discovered before
“ the close of the poll, and application was made
“ to the sheriff to correct it, and evidence offered
“ to him for the purpose, which he refused to receive.” The checque clerk was permitted to give evidence of the mistake as to Lugsden’s vote, and it was proved, that in the checque books of both parties, his vote was entered for Lord Ongley, and not for Mr. St. John, as put down by the poll clerk. Evidence was also given, that,

Mistakes in
the poll.

1 Luders,
P. 350.

before

Mistakes in
the poll

before the poll he intended to vote for Lord Ongley, and that, *after* it, he said he had voted for him. The voter himself was not examined by the petitioner's counsel; but they said he attended, and the sitting member's counsel might examine him, if they thought proper, but that they had reasons for thinking it improper evidence on their part. It was also proved, that means had been pursued to rectify the mistake; that, as soon as it was discovered, a memorandum was made in the petitioner's cheque book; that the poll clerk was informed of it, and was willing to have made his book agree with both the cheque books. *Lord Ongley applied, during the poll, for leave to inspect the poll book of the hundred in which Lugden's vote had been entered, for a particular purpose (not naming it) which was refused by the sheriff.* As to the time at which the mistake was mentioned to the sheriff, and he was applied to to correct it, there was a contrariety of evidence; but the committee resolved, 1. "That the application to the sheriff was such, and made in such time, as to call upon him to attend to it." And, 2. "That the sheriff ought to have taken the vote of William Lugden from the poll of Mr. St. John, and added it to the poll of Lord Ongley."

This case, in which the above resolutions did not pass without much consideration, establishes

the power of the sheriff to correct all mistakes in the poll books, *where the checque books do not agree* with them, and where he is applied to in due time for that purpose; but, in the same committee, a resolution being proposed, "that the counsel be admitted to produce evidence to correct mistakes upon the poll book, although no such evidence was tendered to the sheriff," it passed in the negative. And evidence being produced, by the counsel for the sitting member, to shew that one Thomas Eyre, whose name was entered by the poll clerk as voting for Lord Offory *only*, had voted for Mr. St. John likewise; but it being admitted, that they could not prove notice of the mistake having been given to the sheriff during the poll, a resolution was proposed, "that the counsel be admitted to produce evidence relative to Thomas Eyre," but passed also in the negative. In this case of Eyre, it is not stated that the checque books agreed with the poll book; but if they had not agreed, it would probably have been mentioned in the report. In the case of one Edward Bennet, who had voted for Lord Offory and Mr. St. John, but whose vote, in the poll book, was entered for Lord Offory only, it was admitted that both the checque books agreed with the poll book; but notice had been given, when the mistake concerning Lugsden's vote was mentioned to the sheriff, that, if that

was

Mistakes in
the poll.

1 Luders,
P. 376.

Ib. p. 377.

Ib. p. 382,
&c.

Mistakes in
the poll.

was gone into, there were several mistakes in the entries in the poll books on the other side to be heard; and the committee resolved, that, under these circumstances, "the counsel be admitted to produce evidence relative to Bennett's vote." The voter was the only witness called to prove the mistake; and the committee, after argument, resolved that his evidence should not be admitted. He was objected to principally as interested; but the ground of the decision does not appear.

The Bedfordshire committee, appointed in 1785, to determine the merits of the election (after the former committee had decided upon the return) not only admitted evidence to contradict the entries of votes, where the cheque books agreed with the poll books, but even, contrary to the decisions of the committee which determined the return, permitted the voters themselves to be examined for that purpose. This was carried to such an extent, as will appear from the following cases, that, after having decided upon the regularity of entries, on the *single unsupported* testimony of the voter himself, against the poll books and cheque books confirming each other, the committee found itself obliged to pass a resolution to reform its own practice.

2 Luders,
p. 407.

The name of William Day being entered on the poll for Lord Offory and Mr. St. John, instead

stead of Lord Ossory and Lord Ongley, the book was rectified on the evidence of the voter himself, confirmed by persons that were present and other circumstantial evidence; but here the checque books contradicted the poll.

Mistakes in
the poll.

Prior to this, the committee, in the case of Thomas Ayres, had resolved, "that it was competent for them to hear evidence to correct an entry on the poll;" and accordingly, notwithstanding both the poll book and checque books were agreed in entering his name for Lord Ossory only, parol evidence of a bystander was received to prove that he had voted for both Lord Ossory and Mr. St. John, and the voter himself was examined for the same purpose. The mistake, being proved to the satisfaction of the committee, was rectified by putting the voter's name upon the poll for Mr. St. John also.

2 Luders,
P. 402.

R. Taylor and James Smith were each objected to for being described on the poll as voting for premises of less value than 40s. a year, held by a certain person. Each of them had other premises, sufficient to make up 40s. a year, in the occupation of another tenant. Each of them swore that he had given in the names of both of his respective tenants to the poll clerk, though he had in the oath repeated the description in the poll, and the checque books on both sides confirmed the poll book. Taylor's testi-

Ib. p. 408.
410.

A a

mony

Mistakes in
the poll.

mony was credited, and his vote added to the poll; but Smith's was not believed, for he was rejected.

2 Luders,
p. 411.

It should seem, that these cases had convinced the committee of the danger of permitting such testimony to be received in opposition to both the poll books and cheque books; for in the case of James Smith (which was last determined) after resolving, "that the voter might be called," they "recommended it to the counsel to avoid, "in such cases, the producing witnesses unsupported by other testimony, or any concurring "circumstances, as their evidence would not be "likely to have weight in the decision."

A person
elected
against his
will.

If any person should be proposed as a candidate for knight of a shire, against his own inclination, there is no doubt that the sheriff would be bound to receive the votes tendered for him, and to return him, in case he should have the majority. Formerly instances of this sort have occurred. County of Gloucester, 9th April, 1624. The committee and the House resolved, that Sir Thomas Estcourt, having had a majority of votes on the poll, was duly elected and returned, although he had declared, at the time of the election, that he wished not to be chosen.

Glanville,
p. 99.

1 Journ.
p. 759.

8 Journ.
p. 250.

Bristol, 16th May, 1661.—There was a double return of the Earl of Ossory and John Knight, Esq.
in

in one indenture, and of Sir Humphry Hooke, Knight, and John Knight, Esq. in another. Sir Humphry Hooke had subscribed to the election of the Earl of Offory, had sealed his return, and renounced his own election. The report of the committee of privileges and elections thereupon was, that the return was therefore single, that Sir Humphry Hooke might renounce his return, and that the Earl of Offory might sit till the merits of the cause, touching the said election, were determined; and the House agreed. It was afterwards referred to the committee of elections. Petitions from the burgessees of Bristol were presented to that committee, the then mayor of Bristol ordered to attend, and their report was, that "they found Sir Humphry Hooke had
" much the majority of voices;" and that their opinion was, "that he was duly elected, and ought
" to sit." The House agreed; and ordered that
* * * the new mayor, heretofore sheriff for the city of Bristol, be committed to the serjeant at arms, for his misdemeanour in making a false return for the said city.

A person
elected
against his
will.

8 Journ.
p. 626. 631.
635.

Ib. 644.

The House of Commons has been very jealous of trusting returning officers with the power of judging of the ability or disability of candidates. In this respect, they have been held to act merely ministerially in computing the number of votes,

Sheriff not
to judge of
the disability
of candi-
dates.

Sheriff not
to judge of
the disability
of candi-
dates.

8 Journ.
p. 392.

and returning the persons, whether disqualified or not, who have had the majority. In one case, indeed, it was determined, that the denial of the poll to a person disqualified did not avoid the election.—Leominster, 22d March, 1661. A poll was denied to Mr. Coningsby; but he being a prisoner in execution for debt, and not eligible, the denying the poll to him could not avoid the election; and the sitting members were declared duly elected.

In another case it was resolved, that a person disqualified by office was incapable of *claiming to sit* in parliament; and the returning officer, who had returned others, who had fewer votes than the petitioner, escaped without censure.—In the case of Bedford, 2d and 14th February, 1727, and 16th April, 1728, Ongley and Metcalf had a majority on the poll, but Orlebar and Brace were returned. Ongley and Metcalf petitioned; but it coming out at the hearing that Ongley had an office, touching collecting the customs, at the time of the election, he was therefore resolved “to be incapable of *claiming to sit* in parliament “for the said borough.” Whereupon the counsel did admit, that Orlebar and Metcalf were duly elected; and no defence being made by Brace, Orlebar and Metcalf were resolved to be *duly elected*.

But

21 Journ.
p. 34. 50.
138.

But the general current of authorities is the other way, as in the following instances :

○ Leicestershire, February 7th, 1620.—At the election Sir George Hastings was chosen, and Sir Henry Hastings; and Sir Thomas Beaumont questioned about being chosen. The sheriff adjourned the court till two in the afternoon, when those two gentlemen were again chosen. Sir Thomas Beaumont objected there were many copyholders, and that Sir George Hastings was not an inhabitant or freeholder of the county. The sheriff returned Sir Thomas Beaumont. The merits were afterwards heard by the House, and counsel argued the point of the eligibility of Sir George. The House, notwithstanding the acts of 1 Hen. V. and 8 & 23 Hen. VI. resolved he was eligible. It was also objected to Sir Thomas Beaumont, that he was not elected in time, while Sir George was elected at the hour appointed. Mr. Holt, in the debate, said, “ the sheriff is judge of the number of voices, but “ not of ability or disability; *ergo* his return “ naught.” The speaker charged the sheriff, when brought to the bar as a delinquent, “ that, “ knowing Sir George Hastings to be elected by “ the greatest number, he refused to return the “ election of Sir George Hastings, chose, and “ returned another.”

Sheriff not
to judge of
the disability
of candi-
dates.

1 Journ.
p. 511.

Pa. 513. 515.

Sheriff not
to judge of
the disability
of candi-
dates.

I Journ.
p. 880.

Coventry, 9th April, 1627.—One sheriff returned two gentlemen, not resident in the city, *chosen by the majority*; the other sheriff two others, resident in the city. The committee resolved unanimously, that the two first were duly elected; and the House agreed, and ordered the latter sheriff to be called to the bar, where, having acknowledged his error, further punishment was remitted, and he ordered to join the other sheriff in amending the return.

II Journ.
p. 201.

Liverpool, January 11, 1694.—The House of Commons resolved, that Mr. Alexander Norris, mayor of this borough, “having taken upon
“ him to judge that Jasper Mauduit, Esq. being
“ coroner of the said borough, was incapable to
“ be elected a burghers to serve in parliament,
“ although duly chosen; and having made a false
“ return of Thomas Brotherton, Esq; to serve as
“ a burghers for the said borough, hath therein
“ violated the rights of the Commons of
“ England, and broken the privileges of this
“ House.” And he was sent for in custody of the serjeant at arms, where he remained till the dissolution of parliament, which took place soon afterwards.

Candidates
disabled.

Votes tendered for a person who is disqualified to sit in parliament, are thrown away and lost; but, as the sheriff is not a judge of the ability or disability

disability of the candidates, he is bound to receive them on the poll, and make his return in favour of him who has the majority. It must be remembered, however, that in case a candidate, labouring under disabilities, should be returned, the election will be avoided on petition; and that if, before the election comes on, or a majority has polled, notice is publicly given of his disability, the unsuccessful candidate next to him on the poll must ultimately be the sitting member.

Candidates
disabled.

Where the sitting member had been disqualified for bribery, by the resolution of a former committee, *a copy of that resolution* (which had never been reported to the House) produced at the time of the election, was deemed sufficient notice to seat his opponent.

In the general election in 1780, Mr. Johnstone was returned for the stewartry of Kirkcudbright, and Mr. Gordon petitioned. The latter was determined by the committee, in 1781, to have had a majority of votes; but upon the evidence of bribery, brought against him by the sitting members, the committee resolved, *that Mr. Gordon had been guilty of bribery at the last election for Kirkcudbright**, and that the election was void. Upon the second election, the same

1 Luders,
P. 72.

38 Journ.
p. 15. 245.
415. 689.

* The chairman did not report this resolution to the House. See 38 Journ. p. 245.

Candidates
disabled.

parties became candidates; Mr. Johnstone produced *an attested copy of the above resolution against his opponent* to the electors, and informed them of his incapacity thereby; notwithstanding which Mr. Gordon was elected, and returned. Mr. Johnstone petitioned against him, upon the ground of this incapacity; and upon the trial of his petition, in February, 1782, the committee for that cause avoided the election of Mr. Gordon, and seated Mr. Johnstone, who had the minority of votes.

Where the disability of the candidate is *notorious*, it should seem that it is not necessary to give notice to the electors; and reasoning by analogy to the elections of corporate officers, it may well be doubted whether more can ever be requisite than barely *to give notice*, without producing any evidence of the fact, notwithstanding the electors may not have the power of satisfying themselves whether the objection is well founded

Easter Term.
19 Geo. III.
B. R.

or not. The King v. Bliffel, was a motion for a new trial in an information in nature of quo warranto, against the defendant, for acting as an alderman of Portsmouth, and a verdict had been given for the Crown on the two material issues. Pike and Bliffel were the adverse candidates; at the election, the mayor only voted for Bliffel, while three aldermen voted for Pike; but the mayor gave notice to the aldermen, that Pike

was

was incapacitated to be elected, because he held the office of chamberlain, which was incompatible. Lord Mansfield, addressing the counsel for the Crown, who was arguing that the disqualification was not notorious, said, "Do you doubt that, if he is really disqualified, whether such disqualification is notorious or not, that the votes given for him are thrown away? In another judicature, if the disqualification is *notorious*, it does more; it elects the other party; but of the law in this case can you have a doubt?" The court held, that though the offices were incompatible, it would not operate as a disqualification; for a man may hold the superior office, and drop the other. And in the *King v. Coe*, upon an application for an information in nature of quo warranto, for holding the office of a common-councilman of Cambridge, where one Beales and Coe were proposed to the aldermen, who have the right of election, and Beales had the majority; but notice was given by one of the assembly, that he was incapacitated, because he had not received the sacrament as required by the 5 Geo. I. within twelve months next before the time of election; and it was admitted, upon the authority of the case of *Taylor* and the mayor of Bath, that being thus incapacitated, the votes given to him were thrown away, and his opponent, who had the minority, duly

Candidates
disabled.

Hil. Term.
27 Geo. III.
B. R.

Candidates
disabled.

duly elected, provided the election was in other respects duly conducted; but upon that there was a doubt, and the rule for granting the information was made absolute.

25 Journ.
P. 667.

Aberbrothock, &c. 6th December, 1748.—David Scott, Esq; petitioned against the election of Charles Maitland, advocate, at the time of the election, and long after, being sheriff depute of the shire of Edinburgh, and so incapacitated by the act of 21 Geo. II. c. 19. from sitting or voting as a member of the House of Commons. The petition, after stating that Mr. Maitland, as a commissioner for the burgh of Inverberie, did give his vote for himself to be member for the said district of burghs, and that he induced two other commissioners to give their votes for him, and the sheriff of Forfar to return him, and that the commissioners of two other burghs voted for the petitioner, goes on, “Wherefore the petitioner
“ apprehends that he was duly elected, and ought
“ to have been returned, as the said Charles Mait-
“ land was by law incapable of being elected, as
“ *his incapacity was then objected, and was noto-*
“ *rious to all the electors, and in particular well*
“ *known to the said Charles Maitland himself.*”—

Ib. p. 710.

2d February, 1748-9, the cause was heard at the bar of the House, the evidence on behalf of the petitioner gone through, the counsel for the sitting member heard, and then the farther hearing
was

was adjourned to the 6th; on that day Mr. Scott withdrew his petition.—In the case of Lanerk, in 1774, evidence was produced to prove that Mr. Scott had withdrawn this petition, because it appeared that Mr. Maitland had executed a *demission* (equivalent to a *resignation* in our law) ten days before the election, and transmitted it by post to the Duke of Newcastle, but it had not been accepted. That at the hearing of the case the argument of his counsel was wholly founded on the injustice of considering a man as disqualified, who, before the election, had done all in his power to divest himself of an incapacitating office; and that Mr. Scott, finding the disposition of the House, which was at first with him, was turned by the argument, withdrew his petition.

The case of Fife was this:—General Skene and Mr. Henderson were candidates; the former was returned, and the latter petitioned, and alledged, that he was advised that General Skene was, by the 6 Ann. c. 7. ineligible to parliament, because he was in possession of an office or place of profit under the crown, which had been created or erected since the 25th day of October, 1705, particularly because he was in possession of the office of baggage-master to the forces, and of the office or place of profit of inspector of roads in North Britain, from which he received a salary or annual allowance at the Treasury; which offices,

or

Candidates
disabled.

25 Journ.
p. 713.

2 Dougl.
p. 376.

37 Journ.
p. 500.

Candidates
disabled.

1 Luders,
P. 455.

37 Journ.
P. 561.

or at least that of inspector of the roads, did not exist till many years after the statute of Queen Anne. " And that, at the meeting for election, the
" petitioner, *before the vote was put for the choice*
" *of member of parliament, did publicly apprise the*
" *freeholders present, that General Skene was in-*
" *eligible, for the reasons stated above, and that*
" *any vote given to him would be thrown away;*" and that after the votes had been cast up, the petitioner did enter a protest in the minutes of election, &c.—At the meeting for the election, General Skene admitted, that he held the offices in question, but denied that the disqualification, created by the statute of Anne, attached upon either of them, because they were *military* offices, and *old* ones. The committee, before whom the petition was tried, being of opinion that the novel creation of one of the offices was *notorious*, and that it was within the statute of Anne, held, that under the circumstances before-mentioned, the electors, who voted for the sitting member, had thrown away their votes, and adjudged the petitioner, who had the minority on the poll, to be duly elected.

In the Middlesex election of famous memory the majority of votes given for Mr. Wilkes, who had been expelled the House of Commons, and therefore declared incapable of being elected in that session of parliament, were held to be thrown
away,

away, and the candidate with the smaller number resolved to be duly elected. No public notice of the incapacity appears from the entries in the Journals to have been given at the time of the last election; but perhaps, as two prior elections had been set aside on this account, it was presumed that the freeholders could not be ignorant of it.—

Candidates
disabled.

On the 17th February, 1769, it was resolved, ^{32 Journ.}
“ that *John Wilkes*, Esquire, having been in this ^{P. 228.}

“ session of parliament expelled this House, was
“ and is incapable of being elected a member to
“ serve in this present parliament.” The House

being informed by a member, that no poll was demanded for any other person, nor any kind of opposition to the election of Mr. Wilkes, the House resolved, that it was a void election, and a

new writ was ordered.—17th March, 1769, Mr. ^{Ib. p. 324.}

Wilkes having been again elected without opposition, the election and return were resolved to be “ null and void,” and a new writ ordered.—

15th April, 1769. At this third election Mr. ^{Ib. p. 387.}

Wilkes had 1143 votes, and Mr. Luttrell 296, and Mr. Wilkes was returned. On this day the

House resolved, that Mr. Luttrell ought to have been returned, and amended the return accordingly. Fourteen days were given to petition the House touching the election of Mr. Luttrell.—

29th April. Certain freeholders of Middlesex ^{Ib. p. 447.}
petitioned against the election and return, and

the

Candidates
disabled.

32 Journ.
P. 451.

38 Journ.
P. 977.

Candidates
oath.

the House fixed a day for hearing the matter of the petition, only "so far as the same relates to" the election of Henry Lawes Luttrell, Esquire." —8th May, it was heard, and the House resolved, that Mr. Luttrell was duly elected.—These proceedings, on the 3d May, 1782, were expunged from the Journals, "as being sub-
"versive of the rights of the whole body of
"electors of this kingdom."

By 9 Ann. c. 5. s. 5. Every person (except the eldest son or heir apparent of any peer, or of any person qualified to serve as knight of the shire, or candidates for the universities) who "shall appear as a candidate, or shall by himself, or any others, be proposed to be elected to serve as a member for the House of Commons for any county," &c. is required "upon reasonable request to him, to be made (at the time of such election, or before the day to be prefixed in the writ of summons for the meeting of the parliament) *by any other person who shall stand candidate at such election, or by any two or more persons having right to vote at such election,*" to take the following oath, which the sheriff or under-sheriff (by sect. 7.) is empowered to administer, and required to certify into Chancery, or the Queen's Bench, within three months, under penalty of 100*l.*; and if any candidate, or
person

person so proposed, shall wilfully refuse, upon reasonable request to be made at the time of the election, or at any time before the day upon which such parliament is to meet, to take the oath, his election and return is void. The fee for administering the said oath is fixed (by sect. 9.) at 1 s. and 2 s. for making the certificate, and 2 s. for receiving and filing the same.

Candidates
oath.

The form of the oath is as follows :

“ I *A. B.* do swear, that I truly and *bona*
 “ *fide* have such an estate in law or equity,
 “ to and for my own use and benefit, of
 “ or in lands, tenements, or heredita-
 “ ments (over and above what will satisfy
 “ and clear all incumbrances that may
 “ affect the same) of the annual value of
 “ six hundred pounds above reprises, as
 “ doth qualify me to be elected and re-
 “ turned to serve as a member for the
 “ county of according to the tenor
 “ and true meaning of the act of parlia-
 “ ment in that behalf, and that my said
 “ lands, tenements, or hereditaments, are
 “ lying or being within the parish, town-
 “ ship, or precinct of or in the several
 “ parishes, townships, or precincts of
 “ in the county of or in the several
 “ counties of ” (*as the case may be.*)

It

Candidates
oath.

18 Journ.
p. 129.

It should seem that the House of Commons has put a liberal construction on the clause requiring the candidate to take this oath, and that the election will not be void, provided he takes it not at the election, but at any time before the meeting of the parliament; for in the case of Malden, May 20th, 1715, it was "resolved, that
" John Comyns, serjeant at law, having, at the
" late election of members to serve in parliament
" for the borough of Malden, in the county of
" Essex, wilfully refused to take the oath of
" qualification, as is directed by an act of parliament of the 9th of the late Queen, intituled,
" An act for securing the freedom of parliaments,
" by the farther qualifying the members to sit in
" the House of Commons, though duly required
" so to do, and not having *at any time before the*
" *meeting of this parliament* taken the said oath,
" his election is thereby void."

After the candidate has refused to take the oath, the notoriety of such refusal may probably operate as sufficient notice to the electors of his disqualification, and consequently the votes given for him be thrown away, and the candidate next upon the poll be declared duly elected by the committee. But the sheriff, according to the cases just cited, could not, without danger to himself, reject the votes of those electors who chuse

to

to poll for him, or refuse to return him, in case he has the majority.

If the freedom of election is violated, and the voters prevented, by riotous and tumultuous proceedings, from giving their suffrages, it is the duty of the sheriff to preserve the public peace, and he will be justified in taking the offenders into custody. How far he may have the power to commit, in case of an obstruction of the election in any manner not amounting to a breach of the peace, may admit of some doubt.—Oxford University, 1st March, 1625. The committee sent for the vice-chancellor, but not as a delinquent.—On the 10th of March, the committee report their doubt whether one Vawer was committed by the vice-chancellor for misdemeanour, or for opposing him in the election, and whether he, being a material witness, should be sent for. Resolved, that this be let alone till the vice-chancellor be heard.—On the 17th, the committee report the election to be void, and that Vaad was justly committed by the vice-chancellor for misdemeanours.

Riots at the poll.

1 Journ.

p. 826.

Ib. p. 834.

Ib. p. 837.

Besides the ordinary powers with which the sheriff is invested at the common law, for the preservation of the public peace within his county, the House of Commons is ever jealous to protect the freedom of election from violation, and there-

B b

fore

Riots at the
poll.

32 Journ.
P. 95.

fore ready to support him and other returning officers in the execution of their duty, or to punish those who interrupt them in the discharge of it.

Middlesex, 8th December, 1768. — “ The
“ House being informed that the sheriff of the
“ county of Middlesex attended at the door, and
“ desired to communicate something to this
“ House;

“ They were called in; and at the bar acquainted the House, that a numerous, daring, and outrageous mob appeared this day at Brentford, at the election of a knight of the shire for the said county, obstructed the freedom of the said election, and had, by force and violence, prevented the said sheriffs from going on with the poll; that several of the poll books were missing, and that the said sheriffs had adjourned the poll till to-morrow morning, nine of the clock; and therefore they did apply to this House for their directions how they should proceed in taking the said poll, and did desire the protection of this House.

“ And then they withdrew.

“ Ordered, *nemine contradicente*, that the sheriffs for the county of Middlesex be again called in, and that Mr. Speaker do inform them, that this House doth highly approve of their conduct in making application for the
“ directions

“ directions of this House how they shall pro-
 “ ceed on account of the daring and outrageous
 “ mob, which appears this day to have inter-
 “ rupted the freedom of the election for the said
 “ county.

Riots at the
 poll.

“ That they immediately do every thing in
 “ their power to recover all the poll books, if
 “ possible; but, if that cannot be done, that they
 “ do apply to the checque clerks of each candi-
 “ date for the books kept by them, and inform
 “ such clerks, that it is the order of this House
 “ that they do produce and deliver the same to
 “ them.

“ That they do compare the said books, and
 “ report to this House, on Saturday morning
 “ next, the state thereof.

“ That they do repair to-morrow morning to
 “ the place of polling, pursuant to their adjourn-
 “ ment, and do then further adjourn the said
 “ poll to Monday morning next, nine of the
 “ clock.

“ That they do apply to the magistrates of the
 “ county of Middlesex, and acquaint them, that
 “ it is the order of this House that the said
 “ magistrates do attend the said election, and do
 “ appoint a proper number of constables, and
 “ take every other means in their power to pre-
 “ serve the peace and freedom of the said elec-
 “ tion.

Riots at the
poll.

“ And that Mr. Speaker do assure the said
“ sheriffs of the support and protection of this
“ House, in the execution of their duty, and that
“ this House will proceed with the utmost seve-
“ rity against any person who shall dare to violate
“ the freedom of the said election.

“ And the said sheriffs were again called in,
“ and Mr. Speaker acquainted them therewith.

“ And then they again withdrew.

“ Ordered, that the said order be forthwith
“ printed and published.”

32 Journ.
p. 363.

On the 10th December, 1768, the sheriffs
were “ called in, and at the bar informed the
“ House that they had, in obedience to the order
“ of the House of Thursday last, adjourned the
“ poll for the election of a knight of the shire
“ for the said county, until Monday morning
“ next, nine of the clock; and that they had re-
“ covered all the poll books which were missing
“ at the adjournment of the said poll upon
“ Thursday last.

“ And they were examined as to the condition
“ of the said books, by what persons the said
“ books were delivered to them, and in whose
“ custody they had been since Thursday last.

“ And then they withdrew.

“ Ordered, that the said sheriffs be again
“ called in, and that Mr. Speaker do acquaint
“ them, that they are directed by this House to
“ proceed

“ proceed to the place of polling for a knight of
“ the shire for the said county, on Monday morn-
“ ing next, at nine of the clock, and that they do
“ then further adjourn the said poll to Wednes-
“ day morning next, at nine of the clock, and
“ do, in the mean time, take the best means in
“ their power of satisfying themselves, on ex-
“ amination, whether the poll books have been
“ altered or not; and that they do not proceed
“ in the further taking of the said poll, till they
“ shall have received full satisfaction that no
“ alterations have been made in the said poll
“ books.

Riots at the
poll.

32 Journ.
p. 98.

“ And the sheriffs were again called in, and
“ Mr. Speaker acquainted them therewith.

“ And they again withdrew.

“ Ordered, that the said order be forthwith
“ printed and published.”

The election of Mr. Wilkes being declared void; a new writ was ordered; and on the 7th April, 1769, preparatory to the election, it was ordered, “ that the sheriffs of the county of Middlesex do apply to the magistrates of the said county, and acquaint them, that it is the order of this House that the said magistrates do attend the next election of a knight of the shire for the said county, and do appoint a proper number of constables, and take every other means in

Riots at the
poll.

20 Journ.
p. 60.

“ their power to preserve the peace and freedom
“ of the said election.”

Coventry, 20th November, 1722.—It was resolved, “ that it appears to this House, that
“ there were notorious and outrageous riots, tu-
“ mults, and seditions, at the late election of
“ citizens to serve in parliament for the city of
“ Coventry, in defiance of the civil authority,
“ and in violation of the freedom of elections,
“ caused by the agents and friends of the peti-
“ tioners, who were the authors, contrivers, and
“ promoters of the said riots, tumults, and sedi-
“ tions.” Whereupon the election was declared
void; and the House further “ resolved, that it
“ appears to this House, that Charles Buggs was
“ one of the principal contrivers and promoters
“ of the riots, tumults, and seditions, at the late
“ election of citizens to serve in parliament for
“ the city of Coventry.” He was thereupon
ordered to be taken into custody of the serjeant
at arms; and similar resolutions and orders were
made against eight others, by name.

1 Dougl.
p. 147.

Morpeth, 1774.—The Hon. William Byron,
Peter Delme, Esq. Francis Eyre, Esq. and
Thomas Charles Bigge, Esq. were candidates.
At the close of the poll the majority was, and was
declared to be, in favour of Delme and Byron;
the bailiffs were proceeding to make the return,
when

when they were forced by open violence, and a just apprehension of immediate danger, both on the evening of the election, and the next morning when the return was executed, to sign a return of Eyre and Delme. Evidence was given to shew that the riot was contrived and promoted by Mr. Eyre; and the committee was much pressed, on the part of the petitioner, to make a special report against the persons concerned in the riot, that the House might proceed against them. The committee made no special report, but determined Mr. Eyre was not duly returned, and that Mr. Byron ought to have been returned a burgess for the borough of Morpeth; the *return* was accordingly amended, and liberty given to Mr. Eyre, and the freemen and electors, to petition the House to question the election of Mr. Byron, within fourteen days, if they thought fit.

Riots at the
poll.

Thus assisted and protected in the exercise of his duty, it is no light excuse that will justify a returning officer in allowing the poll to be interrupted by riots, and in omitting to make the regular return on the proper day.

Leicestershire, 24th March, 1714.—The sheriff returned specially, that his under-sheriff was proceeding in the election, when certain persons, to the number of forty or more, behaved riotously, routously, and unlawfully, to disturb the election, and with force and arms assaulted the under-sheriff,

18 Journ.
p. 21.

Riots at the
poll.

18 Journ.
p. 58.

sheriff, being in execution of the writ, and beat and ill treated him, and disturbed the election, and threatened him with loss of life and mutilation of members, and so threatened and ill used him, and made such riots, routs, affrays, tumults, and disturbances, that he could not cause to be elected two knights, according to the exigency of the writ. The House taking notice of this special return, and being informed that two petitions against the election had been presented, ordered a new writ to issue, and the under-sheriff to attend.—11th April, 1715, he attended, and was heard, and witnesses examined; and the House “ resolved, that the said Mr. William Baresby, “ the under-sheriff of this county, having neglected to return two knights of the shire to “ serve in parliament for the said county, by “ the 17th day of March, being the day of the “ meeting of this present parliament, is guilty “ of a great breach of the privilege of this “ House.

Ib. p. 125.

38 Journ.
p. 8.

“ Ordered, that the said William Baresby be, “ for the said offence, committed to the custody “ of the serjeant at arms attending this House.”

And, on the 19th of May, he was, upon his petition, brought up, reprimanded, and discharged.

Coventry, 6th Nov. 1780.—The sheriffs made a special return why they had not returned

two

two citizens, certifying that they were impeded in the execution of the writ, and that the election was prevented by riots.—15th March, 1781. The sheriffs were heard in their defence; and it was “resolved, that it appears to this House, “that, at the last general election of citizens to “serve in parliament for the city of Coventry, “Thomas Noxon and Thomas Butler, the sheriffs, who were the returning officers at the said election, *were not prevented* by riots, or otherwise, from making a return of members to “serve in parliament for the said city.” And it was “resolved, *nemine contradicente*, that the said “Thomas Noxon and Thomas Butler, late sheriffs of the said city of Coventry, not having “made any return of members to serve in parliament at the last general election for the said “city, are thereby guilty of a high violation of “the law, and a gross breach of the privileges of “this House.” And for this offence they were ordered to be committed to his Majesty’s gaol of Newgate.

Riots at the
poll.38 Journ.
P. 295.

From the latter case, it should seem that riots at an election may, by possibility, be so outrageous as to excuse the sheriff in making a special return; but this we may safely lay down, that they must be such as the House shall resolve sufficient *to prevent* the sheriff from proceeding with the election.

In

Riots at the
poll.

D'Ewes
Journ. p.
627.

In one instance, Denbighshire, 5th November, 1601, where, by reason of great disturbance, the sheriff could not go on with the election, he dismissed the electors by proclamation, stayed the election, and wrote a letter to Secretary Cecil, which was read to the House of Commons; and he seems to have been excused from making a return, as the only dispute was how a new writ should issue.

Where the freedom of election has been violated by riots, the election has been uniformly set aside; but where the returning officer has been able to continue the poll, and comply with the exigency of the writ, by the return of members, he has escaped censure.

10 Journ.
p. 254

Exeter, 6th August, 1689.—The report from the committee was, that the petitioner insisted that the election was disturbed by several butchers, and others, and that it was a void election. Failing to prove it, the sitting member was declared duly elected.

20 Journ.
p. 53.

Westminster, 6th November, 1722.—The petition complained of an undue return of the sitting members, obtained by riots and tumults. The House, after the evidence on both sides was closed, and counsel had been heard, “resolved, “that it appears to this House, that there were “notorious and outrageous riots and tumults at “the late election of citizens to serve in parlia-
ment

“ ment for the city of Westminster, in defiance
 “ of the laws of this realm, and in defiance of the
 “ freedom of elections.” The sitting members
 were resolved to be not duly elected; and it was
 further “ resolved, that the late election of citi-
 “ zens to serve in parliament for the said city, is
 “ a void election.”

Riots at the
 poll.

Coventry, 22d March, 1736.—There was a 22 Journ.
 discontinuance of the poll, occasioned by riots, P. 819.
 which the petitioner insisted had been instigated
 by the sitting member. The petitioner examined
 witnesses, but the sitting member produced none.
 The House resolved, that “ it appears to this
 “ House that there was a great riot and tumult
 “ at the late election of a citizen to serve in this
 “ present parliament for the city of Coventry, in
 “ violation of the freedom of elections.” The
 sitting member was resolved to be not duly
 elected, and the election void.

Westminster, 22d December, 1741.—The 24 Journ.
 two sitting members were resolved to be not duly P. 37.
 elected. The grounds on which the election was
 impeached were the riotous proceedings, which
 prevented an impartial poll, and the illegal and
 arbitrary conduct of the high bailiff*, and the
 election was resolved to be void.

Pontefract,

* I cannot forbear here to mention, as a curious historical
 anecdote relating to the conduct of Mr. John Lever, the
 high

Riots at the
poll.

32 Journ.
p. 68.

Pontefract, 24th Nov. 1768.—The House resolved, that the counsel should be confined to those allegations only in the petition which complained of the freedom of the election being disturbed by riots. The counsel for one of the sitting members thereupon said he should give the House no further trouble. The petitioners counsel examined witnesses to prove the above-mentioned allegations; and the House resolved, that it appeared there were notorious and outrageous riots and tumults at the election, “in defiance of the civil authority, and in violation of the freedom of elections.” The sitting members were resolved to be not duly elected, and the election void.

Poll irregularly taken.

Where the poll has been so ill conducted, and the votes so irregularly taken down that it is

high bailiff at that time, that the committee of secrecy, appointed by the House of Commons to inquire into the conduct of Robert Earl of Orford during the last ten years of his administration, reported that 1500*l.* issued for *secret services*, under the head of *money to reimburse expences for his Majesty's service*, was paid to Lever through the interest of Sir Charles Wager, (one of those whom he had unduly returned) while he was in custody of the serjeant at arms for this offence. The committee call this, in the report, “the remarkable sum to Lever, as a reward to a most unjust returning officer, censured by and actually under the punishment of parliament as a violater of the liberties of his country.” See 24 Journ. p. 297. 300. 331.

impossible

impossible to ascertain which of the candidates had a majority of legal votes, the House has declared the election to be void, and ordered a new writ to issue.

Poll irregularly taken.

Coventry, 31st July, 1660.—The committee reported, that the persons concerned in the said election were very numerous, and divers names were doubly polled, and some names entered of strangers and persons unknown, as also of almsmen and others, that pay not scot and lot; and the cases were found so various and perplexed, that, after several sittings, the committee could make no considerable progress therein; and that, in regard of the great uncertainties that fell out in the several cases, as well the persons returned as the petitioners, declared themselves content that the former election should be set aside; and that the committee was therefore of opinion, that the former election be set aside. To which resolution the House agreed. 8 Journ. P. 106.

Northampton, 26th April, 1662.—The committee reported, that there were several persons, who had a right to vote, that did demand to poll, and were denied it; and that the matter was so intricate that the committee could not determine what the number was of those who had a right to give their voices, and were denied the poll, and therefore that the election was void; and the House agreed. Ib. p. 414.

Pembroke

Poll irregularly taken.

32 Journ.
p. 30.

Ib. p. 756.

Pembroke county, 10th November, 1768.—The sheriff was complained of because he appointed several attorneys, friends to the sitting member, as deputies to determine the legality of votes, which deputies were not sworn to do indifferent justice between the parties, and acted partially, &c. and, when desired himself to attend, he wholly absented himself till the poll was just finished, when he refused to hear objections, and denied a scrutiny.—6th March, 1770, resolved, that the high sheriff, having presided at the election, and taken the oaths, &c. and having appointed deputies in several booths, who, during the poll, decided in his absence on the legality of a very great number of votes, and having, in some instances, refused to take into consideration their decisions, although he was requested so to do, and complaint was made to him of the partiality of the said deputies, and having absented himself from the place of polling during a great part of the time the poll was taking, by means whereof it became *impossible for him to form a certain judgment which had the majority of votes*, acted illegally and partially, with a view to serve Sir R. P. and is guilty of a great breach of his duty as returning officer.

Sheriff must complete the poll.

By proceeding to a poll, it is admitted on all sides, that the election was not completed on the view;

view; therefore when the poll has been granted, though the party who demanded it "would wave" the poll, yet the sheriff must proceed with "the scrutiny," because it is by the final result of the poll only that the election can be completed.

Sheriff must
complete the
poll.

See pa. 235.

Yorkshire, 22d June and 5th July, 1625, where the poll was interrupted by one of the candidates, and so the election not finished, but the other two, who had the greatest number of votes *upon the view*, were returned, the election was resolved to be void. So in the case of Pomfret, cited by Mr. Glanville in the debate, the election of Sir Joseph Jackson was holden not good, though his adversary, Sir . . . Beaumont, interrupted the poll.

1 Journ. p.
801. 803.

Ib. p. 802.

There are cases in which the returning officers, having refused to complete the poll, the electors have gone and voted before a constable, or even a private person, and their polls have been allowed by the House of Commons, and the merits of the elections decided upon them.

1 Dougl.
P. 310.

So Liverpool, 5th March, 1729-30. Witnesses being examined as to the mayor's withdrawing himself from the place of polling, before he had taken the suffrages of several persons who tendered their votes for the petitioner; and one Henry Orme being called and examined, and producing a list taken by him of divers persons who

21 Journ.
P. 476.

Sheriff must
complete the
poll.

1 Dougl.
P. 293.

1 Dougl.
P. 313. note.

who gave their votes for the petitioner, after the mayor had left the place of polling, the sitting member's counsel objected against the admitting of his evidence. The point was argued, and the House resolved, " that the paper produced by " Henry Orme, containing a list of persons who " voted for the petitioner, after the mayor had " left the place of polling, be admitted as evi- " dence of such persons voting." It should be observed, that this case* probably happened prior to the 2 Geo. II. c. 24. taking effect, by which statute every voter may be called upon to take the bribery oath, or affirmation, " before the officer " or officers presiding or taking the poll" at the election; and sect. 2. explains who is meant by those officers, by providing that, " if any sheriff, " mayor, bailiff, or other returning officer," shall admit any person to be polled, without taking that oath or affirmation, if demanded, " such " returning officer shall forfeit, &c.;" and by sect. 3. every sheriff or returning officer is to be sworn to do his duty.—In the Cricklade case (1775) the returning officer, under pretence of the election being interrupted by a riot, closed the poll before all the voters had polled, and de-

* The act took effect on the 24th of June, 1729. The writ for Liverpool, which was on a vacancy, was ordered on the 14th May.

clared

clared the numbers to be in favour of the sitting member. He refused afterwards to renew and finish the poll; and thereupon the electors, in the interest of the petitioner, went and gave their voices before a constable. The remaining electors, friends to the sitting member, were apprized of this poll, and warned to attend and give their votes, but none of them came. The petitioner's counsel offered to produce the poll taken by the constable, in order to shew that a large majority of all the electors of Cricklade would have voted for the petitioner, and therefore that he must be declared duly elected. The committee resolved, that the constable's poll should not be given in evidence, and that parol evidence should not be admitted to prove what persons had polled before him. And the election was declared void.—With respect to county elections, there is a still stronger reason for not allowing the poll to be taken by a stranger; for by the 18 Geo. II. c. 18. the freeholders oath is to be administered, when duly required, by the sheriff, under-sheriff, or sworn clerk; and, if the poll might be taken by a person not authorized to administer that oath, the electors would be deprived of their security against the partiality of the sheriff. The same reasoning applies to the other oaths which may be imposed on electors at the poll.

Sheriff must
complete the
poll.

35 Journ.
P. 135.

Closing the
poll.

Since the introduction of commerce, and the alienation of real property, has so much increased the number of freeholders, it has become impossible for the sheriff to ascertain the precise number in his county, and still less can he know how many may think fit to give their suffrages at the election. He therefore was always (till the 25 Geo. III. c. 84.) obliged to watch an opportunity of closing the poll, when it might fairly be presumed that all the electors had actually voted, or that all who intended to poll at that election were come in. In most counties the mode of drawing this inference was regulated by custom; and in pursuing that the sheriff was safe, while by deviating from it he might incur the charge of partiality. In general, when the number of voters who polled in the course of a day were much diminished, and dropped in singly, after considerable intervals of time, the sheriff gave notice, that at an appointed hour he would proceed to make the usual proclamations to close the poll. These proclamations, generally three in number, and made at small intervals from each other, purported that the poll would be finally closed at a certain hour of that or some future day, sufficiently distant, under the circumstances, for all the freeholders then unpolled to come in.—From the late case of Bedfordshire, it appears that, by the usage in that county, if a single freeholder tenders

1 Luders,
P. 351.

tenders his vote in the intervals between the several proclamations, they must all be made over again; so it happened repeatedly at that election; and so is the usage in many, perhaps in most other counties. The effect would also be the same, if any voters were to come in after the last proclamation, and before the time mentioned for finally closing the poll was expired. This seems to be a most absurd and inconvenient rule; for it gives any of the candidates, whose object is delay, by waiting till the second or third proclamation is made, and then polling a single vote, an opportunity to protract the election almost *ad infinitum*; and in this manner the candidates for the county of Bedford for some time rendered ineffectual every effort of the sheriff to close the poll.—In the case of Dorsetshire, 15th February, 1677, the election was resolved, by the committee, to be void, “because the said sheriff did not execute or obey his writ. Because he left divers freeholders unpoll’d, and made no due proclamation before he closed the poll. Because he did not number those voices he had polled, nor declared who he judged to be duly elected. Lastly, he returned two persons, when he should have returned but one; and signified such his return to be the agreement of the parties, rather than his judgment according

Closing the
poll.

9 Journ.
P. 439.

Closing the
poll.

“ according to right and law.” And the House agreed.

The sheriff, however, has seldom been under the disagreeable necessity of closing the poll against the consent of the candidates and freeholders; for after the poll has been extended to considerable length, and few straggling votes offer themselves, it has been usual for the candidates, with the approbation of their friends, to enter into an agreement that the poll should be finally closed at some fixed time. So it was done in the Bedfordshire case, where, in one of the sharpest election contests ever known, the sheriff forced the candidates to come into such an agreement (after they had repeatedly counteracted his design) by declaring his resolution to put an end to the poll by his own authority, at all events, if they refused their consent*.

The

* In the case of Bedfordshire, 1784, as the sheriff's conduct, not only in this particular, but also during the poll, was minutely inquired into, it may be of use to state his general line of proceeding. After some degree of regularity had been established in the mode of proceeding, the rule was, that every objection to a voter should be made when he was at the place of polling. Counsel attended during the whole poll, and every point in dispute, requiring the sheriff's decision, was to be formally mentioned to him, by them, or by the candidates themselves. A question once decided, upon hearing the parties, the sheriff would not permit

The 25 Geo. III. c. 84. s. 1. has removed many of the difficulties attending the closing of the poll, by providing that "no poll for the election of any member or members to serve in parliament shall continue more than fifteen days at most (Sundays excepted); and if such poll shall continue until the 15th day, then the same shall be finally closed at or before the hour of three in the afternoon of the same day." Whether, upon the whole, advantage may accrue to the public from this provision,

Closing the
poll.

mit to be again revived. He admitted several votes to be inserted on the poll with queries. The election lasted ten days; and at last, when the number of voters who polled in a day were much diminished, and both parties were determined to persevere, he resolved to put an end to the poll, if possible, without their consent. He accordingly frequently made the usual proclamations, the effect of which was as often prevented by the polling of fresh voters." At length he determined to finally close the poll at some precise time; and intimating his intention to the candidates, they agreed, on the 17th of April (Saturday) that it should be closed at six o'clock in the evening of that day. Accordingly it was closed, with an adjournment of the county court to Monday the 19th, in order to consider the rights of the votes tendered before six o'clock, and not then accepted for want of time, *to discuss the votes queried during the poll*, and to cast up the numbers. When the sheriff finally declared the numbers, a scrutiny was formally demanded, and refused. The conduct of the sheriff met with no animadversion from the committee.—1 Luders, p. 350, &c.

Closing the
poll.

may be justly questioned; for, in many cases, it gives returning officers an excuse for protracting the poll beyond all reasonable bounds; the late election for the city of Gloucester may be cited, where the poll was continued till the last moment allowed by the act. If the practice should obtain of extending the poll, upon all occasions, to fifteen days, or if a partial returning officer has the power to do it, whenever the interest of his favourite candidate will be assisted, the city of Westminster, and some other populous places, may indeed be benefitted by this act, but the kingdom at large must suffer; and it will be a poor compensation to the public to find, that in five or six instances elections have been curtailed, while in a hundred others they have been protracted. The prevention of this evil rests much with the House of Commons, and it ought now to watch over the conduct of returning officers with redoubled care, that a wise and salutary regulation, in some cases, be not perverted into an engine of oppression in many others.—Should the sheriff, in the impartial exercise of his duty, think it necessary to close the poll before three in the afternoon of the fifteenth day, he must proceed in the manner above-mentioned; if it should be continued until the last hour appointed by the statute, no proclamation is necessary.

In

In case there should be an equality of votes upon the poll for the respective candidates, the returning officer has not a casting voice, "without the help of a custom, or some other special matter." With such help, the returning officer of a *borough* might possibly have that privilege; and in the case of *Hastings*, hereafter cited, evidence was produced to prove that he had it. But as to *county* elections, there can be no such custom; and the conduct of the sheriff must be governed by the general law of the land.

Casting
voice.

At Bridgwater, 7th December, 1669, there were twelve votes on one side, and eleven on the other; the mayor voted to ~~make~~ the number even, and then gave a casting vote for the sitting member. The committee went into the merits of the election, and the petitioner was seated; but their opinion on this point does not appear. However, in the case of *Hastings*, 20th January, 1698, thirty-four, and the mayor, voted on one side, thirty-four, and the candidate, on the other; and to make a majority the mayor gave a casting vote. It was insisted, that the mayor had voted *twice*, which he had no right to do, and the case of Bridgwater was cited; to support the claim of the mayor to a casting voice, evidence was received that he had it by custom in the election of corporate officers; but other votes were objected to on both sides, and there was only a general

9 Journ.
p. 118.

12 Journ.
p. 444.

resolution,

Casting
voice.

1 Luders,
p. 77.

resolution, that the sitting member was duly elected.

Mitchell, 1784.—There were four candidates, for whom the numbers on the poll stood as follow: for Howell 27, Wilbraham 21, Hawkins 21, and Boscawen 15.—Mr. Howell was admitted to be duly elected, and his return not disputed. Mr. Wilbraham and Mr. Hawkins were also both returned. The returning officer, the Portreve, had voted for Mr. Wilbraham; and, upon finding the numbers between him and Mr. Hawkins equal, declared, that if he possessed a casting voice, he gave it for Mr. Wilbraham; but left the effect of it to future discussion.—When the merits of this election were tried before the committee, Mr. Wilbraham's counsel gave up the claim of the returning officer to a casting voice, and went upon other points.

Equality of
voices.

Pa. 273.

Glanv. p. 21.

Glanv. p. 47.
58.

In the Winchelsea case, 18th March, 1623, it was determined, that the mayor had not a casting vote; and in one of the resolutions of the committee, it is said, that in case of an equality, “the electors ought to continue together, or meet again, by adjournment, till they can agree to an election with plurality of voices.” And this resolution was reported, and agreed to by the House.—In the case of Chippenham, 6th March, 1623, the bailiff, and twelve burgesſes, claimed the

the right of election, to the exclusion of the bur-
gesses at large; twelve of them assembled, and
were unanimous in the choice of the first burgess,
but were equally divided as to the other vacancy.

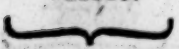
Equality of
voices.

1 Journ.
p. 684.

They adjourned the election of the second bur-
gess by agreement to another day, and pro-
ceeded to a fresh election; the twelve were
again equally divided, but one of the candi-
dates had a majority by the vote of the thirteenth,
who then attended. The other candidate for the
second place was elected at the same adjourned
meeting, by the burgesses at large, who had
not before asserted their right to vote; and the
committee determining that the right of elec-
tion rested with them, he was declared duly
elected. This case shews that an election, ad-
journed on account of an equality of voices,
was understood to commence *de novo* at the
adjourned assembly; and even that electors who
had not attended the original meeting, might
come in and vote at the meeting held pursuant
to adjournment. In the Winchelsea case, it
was expressly resolved, "that, in an assembly
"for an election, he which, at the begin-
"ning of the election, pronounceth his voice
"one way, finding the voices equally divid-
"ed, may, before the assembly dissolved, change
"his mind, and give his voice another way,
"and

Glanv. p. 22.

Equality of
voices.



“and so make a good election that way, by a
“majority of voices.”

This would be dangerous doctrine in modern days; and such adjournment would generally be employed by candidates to obtain a change of suffrages in their favour, by a struggle who should excel most in the arts of corruption. The statutes by which the sheriff is bound to regulate himself in taking the poll, and making the return, might perhaps render such adjourned meeting impracticable; but even by the 25 Geo. III. c. 84. where the poll is concluded so early within the fifteen days as to afford a reasonable prospect that it might be gone through a second time before they expire, the attempt is not prohibited. Both in this case, and that of members being elected separately, the second meeting would be only an adjournment of the first; the assembly would be continued, not dissolved; and the whole election in contemplation of law finished at one and the same time. But the sheriff, or other returning officer, having *once* undergone the fatigue of taking the poll, would rarely be inclined to enter upon it again, especially as another alternative presents itself.

It is clear, from all the decisions on the Journals, that where there is an equality of votes, it
is

is a void election. From the following cases it appears that the returning officer may, without incurring the censure of the House, return either all the candidates who have an equal number of voices on the poll, or one only. But the modern practice has been in favour of double returns, and this seems most consonant with justice.—Gatton, 5th May, 1660. The committee reported, that there were four candidates; and that Thomas Turgis, William Oldfield, and Roger James, who were returned by two several indentures, had all of them equal voices; and that Robert Wood, Esq. who was returned in the same indenture with the said Roger James, had the minority of votes, and thereupon they resolved the election to be void; and the House agreed.

Equality of
voices.

8 Journ.
P. 13.

New Windsor, 14th May, 1689.—Sir Alger-noon May had twelve voices without the mayor, and Sir Christopher Wren had twelve with the mayor, and was returned; whereupon the committee resolved, that each of the candidates was not duly elected, and that it was a void election; the House agreed to these resolutions.

10 Journ.
P. 132.

Calne, 12th March, 1701.—The votes were even; eight for each of the candidates; there was a double return, and the election resolved by the committee to be void; and the House agreed.

13 Journ.
P. 792.

Bramber,

Equality of
voices.

14 Journ.
p. 287.

Bramber, 18th January, 1703.—The votes were equal, but the returning officer returned one of the candidates; the other petitioned, and, disqualifying some of the voters who had polled for the sitting member, and adding some to his own poll, was seated.

16 Journ.
p. 58.

Harwich, 13th January, 1708.—The mayor, by voting for Mr. Edisbury, one of the candidates, made an equality of voices, and then made a double return. Both the candidates petitioned; Sir Thomas Davall alledging, that the mayor had no right to vote at all, except in case of an equality. The petitions were heard at the bar, and, expressly upon the ground that “there was
“an equality of votes for each candidate, viz.
“sixteen for Sir Thomas Davall, and the mayor
“and fifteen for Kenrick Edisbury, Esq.” (and so ratifying the mayor’s right to vote) the House resolved the election to be void.

Ib. p. 407.

Tiverton, 1st December, 1710.—There were three candidates, all of whom had an equal number of votes, and they were all returned. The House avoided the election, and ordered a new writ.

27 Journ.
p. 38.

In the case of Bury St. Edmund’s, 2d December, 1754, there were three candidates, and all returned, one having sixteen votes, and the two others fifteen each. No petitions were presented;

mented; and the House being informed the two latter did not contest the return, their election was declared void, and a new writ issued to elect one burghers.

Equality of
voices.

Appleby, 3d and 10th of February, 1756.— 27 Journ.
After the House had heard evidence on be- P. 425. 443.
half of the petitioners, their counsel insisted that they had established the right of sixteen votes which had been rejected by the returning officer, had added to their poll six which had been tendered and refused, and had disqualified twelve persons who had voted for the sitting member. One of the counsel for the sitting members admitted, that the votes of thirteen persons had been established by the evidence produced, and that the votes of those thirteen, being added to the poll of the petitioners, made an equal number of votes on both sides; and that being admitted also by the counsel for the sitting members, the House resolved, that each of the candidates was not duly elected, and that the election was void.

After all the electors who chuse to vote have polled, the sheriff was bound, by the common law, to publish in the county court, the names of the persons who had the majority. Before the 25 Geo. III. c. 84. no time was limited for this publication; Majority declared.
Dalton, p. 443.

Majority
declared.

publication; and therefore, since the sheriff has been supposed to be invested with judicial powers, when votes have been queried or objections made which could not be conveniently discussed during the hurry of the poll, it has not been unfrequent for the sheriff to make a short adjournment before the numbers were declared, for the purpose of examining into the right of the disputed votes. This has been almost always done with the consent of the candidates and electors; and the danger of entrusting a returning officer with such a power, against their consent, was strongly pointed out in the speaker's reprimand to Hugh Roberts above mentioned. Such an adjournment was made in the late case of Bedfordshire, and in other cases.

Pa. 339.

Pa. 389.

But the power of the sheriff to make an adjournment after closing the poll, and before the numbers are declared, has been much abridged by the 25 Geo. III. c. 84. s. 1. which enacts, that the returning officer or officers at every election, " shall immediately, or *on the day*
" *next after* the *final* close of the poll, truly,
" fairly, and publicly declare the name or names
" of the person or persons who have the majority
" of votes on such poll; and shall forthwith
" make a return of such person or persons, un-
" less the returning officer or officers, upon a
" scrutiny being demanded by any candidate, or
" any

“ any two or more electors, shall deem it necessary to grant the same.”

The poll, when regularly closed, and the numbers declared, can never be revived or continued, either by the sheriff, or any other person.

Poll cannot
be revived.

Arundel, 24th March, 1623.—Sir Henry Spiller was elected into the first place; but Mr. Mill and Sir George Chaworth were both proposed for the second. There were then present fifty-two electors; twenty-seven for Sir George Chaworth, and twenty-five for Mr. Mill; but that was not discovered till afterwards. Four others came in, who all voted for Mr. Mill; Mr. Mill then had twenty-nine voices, and Sir George Chaworth twenty-seven, and so declared and acknowledged at the time of the polling finished and pronounced. About twelve o'clock, the mayor refusing to dissolve the assembly, all the electors departed, except the mayor and the steward, and two more electors, who continued there till five o'clock at night; they sent for such electors as had been formerly absent, to the amount of ten; and by this means, between five and six o'clock, had made up Sir George Chaworth's number thirty-seven, while Mr. Mill's remained only twenty-nine. Sir George Chaworth was returned; but his election was set aside, and Mr. Mill resolved to be duly elected. The committee held the election to be finished

Glanv. p. 71.

1 Journ.

p. 748.

Poll cannot
be revived.

finished by the pronouncing the polls then present, and " the ten voices lastly given to be in-
" effectual and void, as coming after the election
" fully past and determined; or else it might be
" in the power of an obstinate and wilful mayor
" or officer to continue the election at his plea-
" sure; and peradventure to gain his own pur-
" pose by wearying out the electors with at-
" tendance to see the end or conclusion of the
" election."

10 Journ.
P. 72. 73.

Cricklade, 1st April, 1689, the returning officer, under pretence of danger to himself, closed the poll before all the electors had voted. The numbers then stood thus, twenty-one for Webb, one of the candidates, and five for Freke, the other. The returning officer refused to renew the poll, on which it was continued by the constable; and when the two lists were added together, the numbers were, for Freke fifty, and for Webb only twenty-five. The committee allowed the constable's poll, and were of opinion the poll was not duly closed, and that Freke was duly elected. The House agreed, and ordered the returning officer into custody for his miscarriages in the election.

Poll conclu-
sive.

The right of the sheriff to grant a scrutiny depended, until the 25th Geo. 3. c. 84. entirely upon the nature of his office. If he was clothed
with

with judicial authority, he might examine into and decide upon the rights of voters; if he was only ministerial in taking the poll, he could not proceed to a revision of it. But after he had closed the poll and publicly declared the numbers, without notifying that he would enter into a further investigation of the rights of those who had voted, it has been universally admitted, that he could not, even as a judicial officer, make any alteration, or allow or strike off a single vote, of his own authority. If the poll had been irregularly taken, or disputable votes admitted, it was his duty to mention it in proper time; and every afterthought might be suspected to arise from partiality or corruption. It is difficult, even for the most virtuous returning officer, to keep within the strict path of duty at a contested election through the host of attachments and prejudices that assail him. The House of Commons therefore, with a well-grounded jealousy in favour of the freedom of election, have in many instances determined, that it shall not be in the power of a returning officer, after a public declaration of the numbers, to enter into a *private* examination of the rights of voters, but that he shall be bound conclusively by the poll; and that even the votes which have been objected to at the time, or entered with queries, shall not then be struck off,

Poll conclusive.

D d

Besides

Poll conclu-
five.

Pa. 336, 338,
339.

p. 70.

Ib. p. 87.

24 Journ.
p. 91. 92.

Besides the cases of Cumberland in 1769, and New Shoreham in 1770 and 1771, before-mentioned, the following have occurred.

Scarborough, 21st June, 1660.—It was resolved, that, in regard of the misdemeanour of the bailiffs of this borough, in returning of Mr. Ledgard to serve, &c. though he had a lesser number of votes at the election, both the said bailiffs be forthwith sent for in custody of the serjeant at arms.

Cornwall, 12th July 1660.—The committee determined the merits of the election, and reported “ that the sheriff had miscarried himself “ in returning Mr. Roberts, who, by the sheriff’s own poll, had but 843 voices, and not “ Mr. Boscawen, who had, by the same poll, “ 862 voices ;” and the House agreed.

Denbighshire, 23d February, 1741.—The House resolved, That it appears to this House, “ that, at the last election of a knight of the “ shire to serve in parliament for the county of “ Denbigh, the majority of the voters received “ upon the poll was for the petitioner, Sir Wat- “ kin Williams Wynn, baronet, and was so de- “ clared by the high sheriff, at the close of the “ poll ; and no alteration was made in the said “ poll until after the high sheriff had made a “ return of a knight of the shire to serve in this “ present

“ present parliament for the said county :” and that Sir Watkin Williams Wynn ought to have been returned. The House then “ resolved, “ That William Myddelton, Esquire, high “ sheriff of the county of Denbigh, at the last “ election of a knight of the shire to serve in “ parliament for the said county, having taken “ upon himself to return John Middleton, Es- “ quire, as knight of the shire to serve in this “ present parliament for the said county, con- “ trary to the majority of votes received by “ him upon the poll, and to his own decla- “ ration of the numbers at the close of the poll, “ without any public subsequent examination “ into the rights of the voters, previous to “ such return ; and having afterwards presumed “ to alter the said poll, in order to give a co- “ lour to such return, has acted partially, ar- “ bitrarily, and illegally, in defiance of the “ laws, in manifest violation of the rights of the “ freeholders of the said county, and in breach “ of the privilege of this House.” And it was ordered, for his said offence, he should be committed prisoner to his Majesty’s gaol of Newgate.

Poll conclu-
sive.

An address was resolved to be presented to his Majesty, to give directions for removing him from being receiver-general of the land revenue in North Wales, and also from being one of his

Poll conclu-
five.

24 Journ.

p. 93.

Ib. p. 94.

Ib. p. 98.

Majesty's justices of the peace for the county of Denbigh, and for the county of Flint.

24th February.—A copy of the above resolution was ordered to be presented to his Majesty at the same time with the address; and on the 25th February, his Majesty's answer, that he would give directions for doing what was directed by the House, was reported.

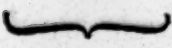
Colchester, 25th February, 1741.—The great contest seems to have been, whether honorary freemen had votes; and queries were put opposite the names of many persons who polled. At the end of the poll, the mayor declared the majority in favour of Gray and Savill. Upon this, a scrutiny was demanded and granted; but the scrutineers of Olmuis and Martin refusing to proceed in it unless the freemen made in 1728 and 1729, who had no right to vote, were given up as a preliminary, the scrutineers for the other side refused to attend, so that no vote was examined into; notwithstanding which, the mayor taking upon himself, as was suggested by the counsel, to disallow those votes, returned Olmuis and Martin against the majority on the poll. It was insisted by the petitioners counsel, that the poll is conclusive evidence of the numbers, and cannot be altered but by a scrutiny; and the committee "resolved that it is the opinion of this committee, that the majority of
" votes

“ votes received upon the poll, at the last elec- Poll conclu-
 “ tion of burgesſes to ſerve in this preſent par- five.
 “ liament for the borough of Colcheſter, in the {
 “ county of Eſſex, was for the petitioners,
 “ Charles Gray and Samuel Savill, Eſquires,
 “ and was ſo declared at the caſting-up the
 “ numbers, upon the cloſe of the poll, by the
 “ town-clerk, by the direction of Robert Price,
 “ Eſquire, ſerjeant at law, and deputy-mayor
 “ of the ſaid borough; and no vote was after-
 “ wards diſallowed.” The Houſe agreed to
 this reſolution, and, that Gray and Savill ought
 to have been returned.

In the caſe of Cardiganſhire, 22d March, 24 Journ.
 1741-2, the poll at firſt was, for the fitting P. 144.
 member 346, for the petitioner 352; but by an
 entry at the end of the poll, it appeared that the
 ſheriff had ſtruck off two from the former, and
 twelve from the latter, and then it ſtood—for
 the fitting member 344, for the petitioner 340.
 It is probable, that this alteration was made
 with the conſent of all parties; for the petitioner
 did not object to what the ſheriff had done, but,
 by diſqualifying ſeven others of the fitting mem-
 ber's votes, gave himſelf a majority and was
 ſeated.

Litchfield, 17th November, 1761.—Hugo 29 Journ.
 Meynell, Eſquire, alledged in his petition, that P. 17.
 Thomas Anſon, Eſquire, the petitioner, and

Poll conclu-
five.



John Levett, Esquire, were candidates; that during the poll, not only the candidates, but the sheriff, had the assistance of counsel to examine into the rights of the voters; that the right of every disputable vote was strictly canvassed, and that at last the petitioner and Mr. Anson had a fair majority of votes upon the poll; that the sheriff, knowing that many of the petitioner's voters, whose votes had been disputed and examined, and then allowed on the poll, were gone home with their title-deeds and witnesses, and many of the witnesses were dispersed, was pleased, injuriously and unjustly, as the petitioner apprehended, to grant to Mr. Levett a general scrutiny, not confining himself to such votes only as were queried on the poll; that the petitioner refused to attend, notwithstanding which the sheriff proceeded; and "that
" on such illegal scrutiny the queried votes were
" not objected to, but the sheriff received objections to seven of the petitioner's voters;
" and, notwithstanding such votes had either
" been admitted by all parties to be good votes
" at the time of polling, or had been canvassed at the time of the poll, and admitted
" by the sheriff to be good, and received on
" the poll accordingly, he struck them off the
" poll, and left a pretended majority of five for
" Mr. Levett," whom, with Mr. Anson, he declared duly elected and returned.

23d December 1761.—It was ordered, that the sheriff might be heard by counsel against the above charge.—21st January, 1762. The counsel for the petitioner proceeded in the first place upon the conduct of the returning officer and the merits of the return.—29th January. The petitioner's counsel declared, that though the sheriff had behaved with partiality, yet, as upon the evidence already given there was not sufficient ground to censure or punish the sheriff, the petitioner did not desire to proceed criminally against him; whereupon the counsel for the sheriff declared he should decline producing any evidence.—1st February. The House resolved, that Hugo Meynell, Esquire, ought to have been returned; and, on the 2d February, the return was amended accordingly.

Poll conclusive.

29 Journ.
p. 100.

Ib. p. 111.

Ib. p. 135.

Ib. p. 138.

Ib. p. 139.

The Latin word *scrutinium* means an inquiry, examination, or research. The English word "scrutiny," evidently derived from it, was used originally in the same general signification; but of late years has had a more specific and technical meaning affixed to it.

Scrutiny in general.

In the simplicity of former times, it was used synonymously with "poll" to signify an examination of the numbers, as they appeared upon the view. In this sense we find it in the debate on the Cambridgeshire case, 19th April 1614, as

Pa. 235.

D d 4

before

Scrutiny in
general.

1 Journ.
p. 837.

Pa. 235.

before stated.—So in the case of the university of Oxford, 17th March 1625. At a convocation, after the vice-chancellor had proposed a candidate, “the masters some of them cried “ *Placet* ; some *Non* ; but none named. They “ moved by the vice-chancellor to name one ; “ they cried *Ad scrutinium*. The grant, 1 *Jac*. “ ... *eisdem modo et forma*, as in other towns. “ Their manner of scrutiny being by their names “ in writing, or *in aurem* of the proctor.” And the election was avoided.—And here it may be observed, that the expression is still applied to the elections of certain officers in the city of London, who are said to be chosen *per scrutinium*. The passages I have cited from Lord Coke, and Whitelocke, also prove, that in the reign of Charles the First, and probably down to the restoration, the words “ scrutiny ” and “ poll ” were used indiscriminately.

Pa. 332, &c.

The practice of entering votes upon the poll conditionally, and, with consent of the candidates and voters, proceeding to an examination of their right after the poll was closed, was not uncommon previous to the revolution: several instances have been already mentioned.—At Abingdon, 7th May 1689, it had been usual for the six preceding elections, which carries it back to the *restoration*, to admit the votes of all,
and

and to examine who were scot and lot men afterwards. This subsequent examination was, by most of the witnesses produced, denominated a *scrutiny*, and from their evidence it appears that the word was then familiar in that place. About the time of the restoration, therefore, I am inclined to suppose that this qualified sort of scrutiny was introduced for the accommodation of the returning officers in the populous scot and lot boroughs, who having no legal criterion, as the sheriffs of counties had, to discriminate those who had votes from those who had none, eagerly embraced any expedient which rendered the execution of their duty more easy and less perilous. But there is no trace, till after the revolution, of any returning officer having assumed the power to examine, *without the consent of the candidates and electors*, into the legality of votes which he had admitted upon the poll. If he was, as I have attempted to prove, at that period, a merely ministerial officer, he could have no authority to institute such an inquiry; and the imperfections of the tribunal plainly evince that it was founded on the agreement of parties, not on the general law of the land. He assumed the character of a judge without any of the powers; he could command no witnesses, he could compel no appearance, he could administer no oath, he was governed by no precedent,

Scrutiny in
general.10 Journ.
p. 123.

Scrutiny in
general.

Pa. 335.

cedent, he was bound by no rule; and, in a word, he had "all the means of doing injustice, " and no one power or competent faculty to do " justice*." Moreover, the returning officer was not always intrusted with the management or controul of the scrutiny; but *other persons* were appointed to examine the rights of the voters, and strike off such as they thought fit: an instance occurs in the case of the Devizes, 22d December 1690.

The simplicity and facility of these scrutinies, in scot and lot boroughs, naturally secured them a general reception. A reference to the parish-books was decisive; and the parties raised a bulwark against the partiality or corruption of the returning officer, by pointing out the medium of proof, and, at most, trusting him with the application of it.

In general, too, the returning officer's intention was publicly announced *before the poll began*; or the examination was confined to such votes as were objected to at the time of polling, and admitted only upon condition that their right should be afterwards substantiated.

Pa. 333, 334.

Pa. 335.

The cases of Abingdon, 7th May 1689, Colchester, 11th November 1690, and Devizes, 22d

* See Mr. Fox's speech in the House of Commons, on the Westminster scrutiny, June 8, 1784.

December

December 1690, have been already cited; and in that of Chippenham, 1st December 1691, the bailiff ordered, that a list should be given of all that claimed a right, and afterwards should be submitted to a scrutiny. The poll being ended, a scrutiny was demanded; and the bailiff, who was the returning officer, *agreed to be the proper judge.*

Scrutiny in
general.

Mr. Justice *Powys*, in delivering his judgment in the case of *Ashby and White*, in 1703, said,

2 L. Ray,
P. 943.

“ But it has been objected, that the defendant should not have absolutely refused to receive the plaintiff’s vote, but should have reserved it for a scrutiny, and should have admitted it *de bene esse*. To that I answer, He might indeed have done so, but he was not obliged to do it; for the officer supposed to know every man’s right and pretence of election: and commonly the weaker part are for bringing in new votes, and devising new contrivances; but the officer ought to disallow them at first, and not to give so much countenance to such a practice as to reserve it for a scrutiny.”

From the following case it appears, that the word “scrutiny” was not only understood in its present signification—a general revision of the whole poll—immediately after the revolution, but that the returning officer might grant it

Scrutiny in
general.

10 Journ.
p. 100.

it even after the poll was closed, and the numbers ascertained.

Guildford, 24th April 1689.—The question was, Whether the right of election was in the freemen and freeholders paying scot and lot and resiant, or, in general, whether they paid scot and lot, or not. After the numbers were cast up, “the poll was scrutinied and reduced” by striking off those who did not pay scot and lot. The petitioner insisted on the right of all freemen to vote generally, and, it seems, did not consent to this scrutiny; for it was proved, that he was not present, but that the mayor offered that he might have two, and he said he was advised not. The sitting member was declared duly elected, and the right of voting confined to freemen paying scot and lot; and as, both upon the original poll, and when reduced by the scrutiny, the petitioner had the smallest number of votes of that description, the legality of the scrutiny was not in dispute.

Scrutiny
legal.

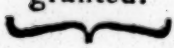
The right of a returning officer, at the common law, to enter upon a revision of the poll after the numbers have been cast up and declared, *without the consent both of the candidates and voters*, has been justly questioned. As a merely ministerial officer, he could not possess it; and if he was invested with judicial authority, it would be

Scrutiny
legal.

be extremely imprudent to intrust him with a power which enabled him to turn the election at pleasure, even after the numbers were declared, and which he could not exercise, in any instance, without impeaching his own judicial acts, and admitting that he had conducted himself carelessly and improperly in the execution of his duty. It would be dangerous too; because, though the inquiry was a fit engine for the purposes of partiality and corruption, he could neither prosecute it honestly with effect, or do justice between the parties. After the case of Ashby and White, and the resolutions of the House of Commons, had encouraged returning officers in the assumption of a judicial character, we find some cases in support of the legality of a scrutiny; such are those of Southwark, 7th February, 1711; Oxfordshire, 18th November, 1754; Westminster, in 1750, and in 1784; and Sudbury, in 1780: all of which will be stated hereafter. The 11 Geo. c. 18. enacts, that, at the elections of members for the city of London, if, after the declaration of the numbers on the poll, a scrutiny shall "be lawfully demanded," it shall be granted. So that it takes for granted, that a scrutiny may be lawful in itself, and may be lawfully demanded. The late act of the 25 Geo. III. c. 84. has removed all doubts upon this subject, and not only empowered returning officers in general to grant
a scrutiny,

a scrutiny, but regulates the mode of proceeding at it, as will be seen presently.

Scrutiny
denied or
granted.



In the case of Guildford, just cited, the returning officer had proceeded to the scrutiny without the consent of one of the candidates; but the circumstances of the case rendered it unnecessary to make any objection on that account. At the close of the last century, and beginning of the present, the legality of a scrutiny, and the power of the returning officer to grant it, do not seem to have been in dispute. This perhaps may have been owing to its never having been granted against the consent of the candidates, where it became material for them to contest it. On the other hand, many instances, about that time, are found in the Journals of the returning officer having refused a scrutiny; and many petitions alledge such refusal as a ground of complaint against him, or for impeaching the election of the sitting member. Hence it should seem that it was by no means settled, that the only object of a scrutiny was to satisfy the conscience of a returning officer as to the legality of the votes he had received upon the poll, or that he had a discretionary power to refuse it, contrary to the wishes both of candidates and voters.

11 Journ.
p. 83. 84.

Worcester, 7th February, 1693.—They examined the voters, on oath, as to their having weekly

weekly or monthly pensions, that being the scrutiny agreed on. After the books were closed, the scrutiny *was adjourned* till Tuesday. The losing candidate demanded a scrutiny, which was denied him.

Scrutiny
denied or
granted.

Southwark, 27th December, 1695.—The committee reported, that the majority was allowed to be with the sitting members; but that the petitioner insisted he lost many voices by riots, made by those who appeared against him; and that, after the poll, a scrutiny was demanded, and denied. The petitioner gave evidence as to the riots, and proved that a scrutiny was demanded for him, and denied, *except for such as had been marked with a Q.* Evidence was produced, on the part of the sitting members, of declarations of the petitioner, that he did not value the being outnumbered on the poll, for he had friends enough to carry it in the House of Commons. The House resolved, that the sitting members were duly elected, and that the petition was vexatious, frivolous, and groundless; and the petitioner, for having preferred the petition, and scandalized the House, by declaring “that, without being duly chosen, he had friends enough in the House to take him into the House,” was ordered into custody of the serjeant at arms, and to make satisfaction to the sitting members for their costs.

Colchester,

Scrutiny
denied or
granted.

11 Journ.
p. 341.

12 Journ.
p. 353.

Ib. p. 356.

Ib. p. 542.

Colchester, 29th November, 1695.—One of the complaints of the petition, against the illegal practices of the mayor, was, his “refusing a
“scrutiny when demanded by one of the candi-
“dates.”

The petition against the election at Coventry, presented 12th December, 1698, complained that “a scrutiny of the poll was denied the pe-
“titioner;” and that against the election at York, 16th December, in the same year, complained that the petitioner “was denied the
“scrutiny of the poll, though he did demand it
“before the books were closed.” Occasioned probably by these recent cases, on the 3d March, 1698, leave was given to bring in a bill for preventing the making of clandestine elections, and for *enforcing the law against denying a scrutiny.*

A very few years after this, Mr. Walpole, in the debate upon the great case of Ashby and White, said, “You had once the case before you,
“Whether a sheriff could refuse a scrutiny?
“and one or two gentlemen would have given
“that power to a sheriff; but a learned gentle-
“man thought it a dangerous question; and he
“desired to come to the merits of the election;
“and that was determined, and you voted the
“worthy member duly elected, and thought it
“a dangerous

“ a dangerous thing to determine one way or
“ another.”

Scrutiny
denied or
granted.

Great Marlow, 11th December, 1744.—Henry Conyngham, Esq. petitioned against the election of William Ockenden, Esq. alledging, that he had a majority of legal votes; and “ that some
“ of the persons who had no right, and were
“ admitted to vote for the said William Ockenden, were objected to at the time of polling,
“ but were polled with queries, it being proposed,
“ by the agents of the said William Ockenden,
“ and consented to by him and the petitioner,
“ that the legality of such votes should be in-
“ quired into upon scrutiny, which was then
“ agreed to be had; notwithstanding which, the
“ said constables very arbitrarily closed the poll,
“ by declaring the said William Ockenden duly
“ elected, by a majority of two votes, without
“ mentioning the numbers entered on the poll,
“ and absolutely refused going into a scrutiny,
“ though the petitioner insisted upon their grant-
“ ing one, in pursuance of the aforesaid agree-
“ ment.” After the petitioner’s counsel had gone through his case, the counsel for the sitting member, 22d January, 1745, produced evidence
of the impartiality of the returning officer, that the poll was duly closed, and that the denial of the scrutiny was not in breach of any agreement entered into during the time of the election.—

24 Journ.
p. 696.

Ib. p. 714.

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denied or
granted.

24 Journ.
p. 715.

Phillips, p.
132.

23d January, Mr. Conyngham withdrew his petition.

In a very recent case, viz. that of Sudbury, 1780, the committee came to a resolution, which is not perfectly reconcileable with a discretionary power in the returning officer to grant or refuse a scrutiny. The returning officer found obstructions in proceeding with the poll, and some of the voters were riotous, so that several persons might thereby be admitted to vote, who had no right. The committee resolved, upon the state of the evidence given, that the returning officer had "a right to grant a scrutiny, and that he "ought not to have refused it."

By the statute of 11 Geo. c. 18. s. 4. the presiding officer at the elections of citizens for London is bound, if a scrutiny be lawfully demanded after the numbers on the poll are declared, to grant and proceed upon it. But the 25 Geo. III. c. 84. s. 1. by which the elections of all counties and places, not under the regulation of any particular acts of parliament, are to be conducted, expressly makes it discretionary in the sheriff to grant or refuse a scrutiny; for the poll being closed, and the name or names of the person or persons who have the majority of votes being declared, the returning officer or officers must "forthwith make a return of such person "or persons, unless the returning officer or officers,

“ cers, upon a scrutiny being demanded by any
 “ candidate, or any two or more electors, shall
 “ deem it necessary to grant the same, in which
 “ case it shall and may be lawful for him so to
 “ do, and to proceed thereupon.”

Scrutiny
 denied or
 granted.

After a scrutiny has been properly demanded, and the sheriff has deemed it necessary to be granted, he ought to appoint a place and time for proceeding upon it. *Proceedings at scrutiny.*

Southwark, 7th February, 1711.—The committee had resolved, “ that, at the late election of a member to serve in this parliament for this borough, the poll being closed and cast up, and the majority of votes declared, by proclamation, for Sir George Matthews, Henry Martin, Esq. the bailiff, could not proceed to a scrutiny, not having adjourned to any time or place.” And the House agreed. The committee also reported the evidence, and that the petitioner was duly elected; to which the House agreed; and resolved, that the bailiff “ was guilty of arbitrary and illegal proceedings, in breach of the privilege of this House, and tending to the subversion of the freedom of election;” and ordered him into custody of the serjeant at arms. *16 Journ. P. 73.*

Reading, 24th November, 1699.—After the poll was closed, the petitioner complained that he *13 Journ. P. 5.*

Proceedings
at scrutiny.

demand a scrutiny, which the mayor granted, and fixed a time and place; but when the petitioner and his friends got there, according to appointment, the mayor had declared the election of the sitting members, without any scrutiny.

Objections
alternately
decided.

By the 2d section of the 25 Geo. III. c. 84.* it is enacted, “ that whenever a scrutiny shall be granted as aforesaid, and there shall be more parties than one objecting to votes on such scrutiny, the returning officer or returning officers shall decide alternately, or by turns, on the votes given for the different candidates, who shall be parties to such scrutiny, or against whom the same shall be carried on.”

Oath administered.

And by section 6th, “ that upon every election of any member or members to serve in parliament for any county, city, borough, or place, within England or Wales, or for Berwick-upon-Tweed, it shall and may be lawful for the returning officer or officers, if he or they see cause, and he and they are in such case authorized, during the continuance of any

* This act, by the 9th section, does not extend to the mode or time of proceeding at any election, for any place where particular regulations, touching the duration of polls and scrutinies (as in London, by the 11 Geo. I.) are specially enacted by statute; but, as there are no statutes to regulate the duration of polls and scrutinies at county elections, the 25 Geo. III. c. 84. is a general law as to all of them.

“ scrutiny

“ scrutiny which shall have been granted as afore-
“ said, to administer an oath to any person what-
“ soever, consenting to take the same, touching
“ the right of any person having voted at such
“ election, or touching any other matter or thing
“ material or necessary towards carrying on such
“ scrutiny.”

Proceedings
at scrutiny.

By sect. 7. persons committing wilful perjury, in taking any oath or affirmation, to be taken by virtue of this act, or suborning others to do it, shall be liable to the pains and penalties inflicted by the 5 Eliz. c. 9. and the 2 Geo. II. c. 25.

Here it may be observed, that, through the omission of some words in the 6th clause, the returning officer has no power to take the affirmation of a Quaker, and yet the 7th clause provides for the punishment of a Quaker affirming falsely!—The mere power to administer an oath to a person *consenting to take the same*, falls far short of a remedy for all the abuses and evils that have been complained of in the proceedings at scrutinies. In every other respect the returning officer remains in the same unfortunate situation as before; and, with the most anxious wish to be impartial, he is utterly incapacitated to do justice; he can now indeed administer an oath to a volunteer witness, but he can neither compel any person to attend, nor submit to be examined.

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when to
finish.


At a general
election.

At the last general election it became matter of very serious inquiry, in the case of Westminster, how far a returning officer could legally proceed upon a scrutiny of the poll, after the return day of the writ was passed. From a perusal of the writ of summons on a general election, it appears that every act commanded by it has reference to the day and place fixed for the meeting of the parliament; and the elections made under the writ, the sheriff is to certify into chancery, "at the day and place aforesaid, *without* " *delay*." The King, whose duty it is to assemble the parliament when the necessities of the state require it, and who alone has power to judge of the fittest time and place for its meeting, declares by his writ, that, for "certain ardent and urgent " *affairs* " concerning himself and his people, it is expedient that the parliament should be holden on an appointed day, at a particular place. If then a returning officer might legally protract the election beyond that day, the writ, under which he acts, must be supposed to invest him with powers to defeat the express purpose for which it issued. It has never been contended, that a returning officer can continue the poll, and *receive votes* after the day of the return; yet it is in effect the same thing whether a given portion of time is consumed in polling and hearing objections to individual votes when they are tendered, or the whole

whole aggregate time is spent in polling all promiscuously, and then examining separately into the right of each voter. A scrutiny is only a continuation of the poll; it is a severance of the judicial capacity, which of late has been exercised by returning officers, from the ministerial. Conformably to the modern system, the returning officer ought to admit no persons to poll until he has decided upon their right to vote; and every vote that is found upon the poll must, as against him, be presumed to be a good one, because, if it was not, it ought to have been rejected. A scrutiny therefore, it may be said, ought never to be granted (we are not now considering what may be done *with consent of the candidates and voters*) except where, from subsequent information, it is discovered that invalid votes have been admitted; and even then it may be doubted whether it ought to extend to all the votes indiscriminately, or be confined to those only which are suspected. The power of granting a scrutiny is at all times dangerous, and gives a corrupt returning officer a never-failing pretence to assist a vanquished friend, and harass his opponent; but it would be infinitely more dangerous, if it might be continued beyond the return day, and he was permitted to make his own negligence a justification for disobedience of the writ.

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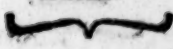


In every instance of a writ issued out of the ordinary courts of justice, its authority is expired on the day of the return, and the person to whom it is directed can in strictness do no one act under it afterwards. When a writ of *feri facias* is issued to take goods in execution, the sheriff cannot avoid making his return as at the proper day; and there never was an instance of his returning, that he was prosecuting an inquiry into the defendant's right to the goods, and, not having satisfied himself that he was the owner, had not yet seized them, and obeyed the writ; in like manner it seems reasonable, that it should be no answer to a writ of summons, that the returning officer was inquiring into the right of the voters to give their suffrages, and, not having satisfied himself upon that head, that he had not finished the election at the time appointed.

It has sometimes happened, that the sheriff, under a writ of *feri facias*, has seized goods in execution, but has not been able to sell them before the day of the return; upon returning these circumstances a *new writ* has issued, called a *venditioni exponas*, commanding him to sell the goods, and compleat the execution, which he ought regularly to have finished under the first writ. In this case, the goods seized by the sheriff are in the custody of the law, to be disposed of as the court which issued the process shall order,

order, and there would be a defect of justice, if further directions were not given; for the original owner could not have them back, without depriving the plaintiff of the benefit of his writ, and the plaintiff could not take them in satisfaction of his debt, until their value was ascertained. But the case of a returning officer proceeding on a scrutiny not only after the writ is returnable, but actually *returned*, is not supported by any analogy to the proceedings of a court of law; for (without dwelling upon the different nature of a writ of summons from a writ of execution; or the distinction between one court granting a writ to perfect the process of another, and a court effectuating its own process) the very granting of a *new writ* or power, shews the old one was expired, and the sheriff sells the goods taken in execution *under a new authority from the court* which issued the former writ, while the returning officer proceeds in the scrutiny without any sanction but *his own*.

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That this doctrine is not more indefensible on principle, than inconsistent with the general law of parliament, which most strictly requires a return of *members* on or before the day appointed for the meeting of the parliament, may be collected from the following statutes and proceedings of the House of Commons.

The statute 23 Hen. VI. c. 14. gives an action against all sheriffs, or other returning officers, for
certain

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certain penalties, mentioned in that act, to the persons *chosen, and not returned*; which action, by the third section, must be brought “within three months *after the same parliament commenced.*” This evidently implies, that the return of members, both to the precepts and writs, must necessarily be made before the meeting of parliament. For otherwise, as the action must be brought by a person chosen, but *not returned*, a returning officer might, under pretence of a scrutiny, have delayed making a return until the three months had elapsed, and thus assumed a legal power of screening himself from the penalties.

10 Journ.
p. 362.

Cardiganshire, 1st April, 1690.—The parliament was summoned to meet on the 20th of March, 1689; and on this day complaint being made to the House against the high sheriff of the county of Cardigan, that he hath not yet made any return of the members to serve in this present parliament for the said county, into the Crown-Office, he was ordered into custody of the serjeant at arms.—4th April. The House being informed that he had made his return since their order to take him into custody, he was discharged, paying his fees. The high sheriff of Carnarvonshire met with the same treatment, on a similar account, about the same time.

1b. p. 363.
367. 370.

The statute of the 10 & 11 Will. III. c. 7. made for “preventing abuses in the returns of
“ writs

“ writs of summons for the calling and assembling
“ of any parliament for the future, or writs for
“ the choise of any new member to serve in par-
“ liament, and to the end such writs may, by the
“ proper officer, or his deputy, be duly returned
“ and delivered to the clerk of the crown, to be
“ by him filed, *according to the ancient and legal*
“ *course,*” enacts, “ that the sheriff, or other officer,
“ having the execution and return of any such
“ writ which shall be issued for the future, shall,
“ on or before the day that any future parliament
“ shall be called to meet, and with all convenient
“ expedition, not exceeding fourteen days after
“ any election made by virtue of a new writ,
“ either in person, or by his deputy, make return
“ of the same to the clerk of the crown in the
“ high court of Chancery, to be by him filed;
“ and the sheriff, or other person making such
“ return, shall pay to the said clerk of the crown
“ the ancient and lawful fees of four shillings,
“ and no more, for every knight of the shire, and
“ two shillings, and no more, for every citizen,
“ burghers, or baron of the cinque ports, returned
“ into the said court, to be by him filed; and the
“ said sheriff or officer shall, by virtue of this act,
“ charge the same to his Majesty, his heirs or
“ successors, and have allowance thereof in his
“ account, in the Exchequer, or elsewhere.”—

And by sect. 3. every sheriff, or other officer, who
shall

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shall not make a return according to the true intent and meaning of this act, forfeits 500*l*.

This act requiring the sheriffs, and others to whom writs of summons are directed, to file the returns on or before the return days, it has been universally admitted, that the sheriff could not proceed in a scrutiny at a county election after that day was elapsed. But, though this act does not immediately relate to the returning officers of boroughs, who act only under the precepts of those to whom the writs are directed, yet it shews most clearly that, by the law of parliament, every election made under a precept, was to be finished in such time that the sheriff might make a return of all the members to be elected in his district together, on or before the day on which the parliament was called to meet. The sheriff could not pay the accustomed fee of 2*s*. for every burghs returned, if the elections were not finished, and a return made.

14 Journ.
P. 3.

23d October, 1702.—“ The House taking
“ notice, by the book of returns from the clerk
“ of the crown, that there are no returns yet
“ made by the sheriffs for the counties of Mon-
“ mouth, Nottingham, Merioneth, and Mont-
“ gomery;

“ Resolved, that the sheriff of the county of
“ Monmouth, for not having made a return of
“ his writ, and of the members elected to serve

“ in

“ in this present parliament by virtue thereof, is
 “ guilty of a great breach of the privilege of
 “ this House.

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“ Ordered, that the said sheriff of the county
 “ of Monmouth be, for the said offence, taken
 “ into the custody of the serjeant at arms attend-
 “ ing this House.

“ Ordered, that Mr. Simon Jackson, under-
 “ sheriff of the county of Nottingham, for keep-
 “ ing back the return of the writ for chusing of
 “ the members of the said county, be taken into
 “ the custody of the serjeant at arms attending
 “ this House.” Proceedings were had against
 the other returning officers, for their respective
 neglects.

Cumberland, 24th March, 1714.—“ The 18 Journ.
 “ House taking notice, by the book of returns, P. 22.
 “ that there is no return made for the county of
 “ Cumberland;

“ Ordered, that the sheriff of the county of
 “ Cumberland do forthwith attend this House,
 “ to give an account why there is no return of
 “ members for the said county.”

4th April, 1715.—“ A complaint being made Ib. p. 46.
 “ to the House, that the under-sheriff of the
 “ county of Cumberland, who executed the writ
 “ for electing knights of the shire for the said
 “ county, hath not made any return thereof by
 “ the seventeenth of March last, being the day ap-

“ printed

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“ *pointed for such return*, by which means none of
“ the members chosen to serve for the said county,
“ or the boroughs therein, can be admitted to
“ give their attendance in this House;

“ Resolved, that Thomas Crosby, under-sheriff
“ of the county of Cumberland, having neglected
“ to return the writ for electing the members of
“ the said county, by *the seventeenth day of March*
“ *last, being the day appointed for the return thereof*,
“ is guilty of a great breach of the privilege of
“ this House.

“ Ordered, that the said Thomas Crosby be,
“ for the said breach of privilege, taken into the
“ custody of the serjeant at arms attending this
“ House.—Mr. Speaker acquainted the House,
“ that the clerk of this House had this day re-
“ ceived a certificate from the clerk of the crown,
“ that the sheriff of the county of Cumberland
“ had made his return of the members of the
“ said county.”

27 Journ.
P. 18.

The most violent contest, that perhaps ever
took place in the annals of parliamentary history,
was that for the county of Oxford, 18th No-
vember, 1754.—A parliament had been sum-
moned to meet on the 31st of May, 1754. The
election for this county began the 17th of April,
and lasted till the 23d of the same month, when
a majority was declared for Lord Viscount Wen-
man and Sir James Dashwood; but a scrutiny

was demanded, and granted, to be proceeded on the 8th of May following, the sheriff making a declaration in these terms: " My desire is, that
" expedition shall be used on both sides; for, if
" the scrutiny is not finished on both sides, before
" the return of the writ, such scrutiny must be
" fruitless." The sheriff allowed Lord Viscount Parker and Sir Edward Turner, who had the fewest votes on the poll, to go through all their objections first, which took till the 27th of May, when Lord Wenman and Mr. Dashwood began; but on the 30th of May, the day before the return of the writ, the sheriff stopped their further proceedings, declaring he must return his writ, and accordingly made a double return of all four. The petition of Lord Wenman and Sir James Dashwood stated these and other particulars of partiality, and alledged, " that, as there stands on
" the face of the poll a great majority of votes
" for the petitioners, received, declared, and
" never struck out or disallowed, the petitioners
" apprehend they ought in all events to have
" been returned only." Another petition was presented by certain freeholders of the county of Oxford, and both petitions were ordered to be heard at the bar of the House.—20th November, 27 Journ. 1754. The question being put, that the high sheriff should attend the House, it passed in the negative; and thus his conduct in making this double

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P. 22.

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27 Journ.
p. 292.

Ib. p. 293.

double return received the sanction of the House. Lord Parker and Sir Edward Turner were at last (23d April) resolved to be duly elected.

The very day after the Oxfordshire election had been determined, viz. on the 24th of April, 1755, a motion was made, and the question proposed, " that all sheriffs or returning officers, at
" all county elections for that part of Great
" Britain called England, may, upon a scrutiny,
" demanded after the close of the poll books,
" grant the same; and, if there is not sufficient
" time between the close of the poll books, and
" the necessary return of the writ, to finish and
" compleat the said scrutiny, he may then, and
" in such case, if he thinks fit, make a return of
" all the candidates." But the question was not put, on account of a motion to adjourn, upon which the question was previously put, and carried.

Westminster, 1784. — The parliament was summoned to meet on the 18th of May. The election for this city began on the 1st of April; Lord Hood, Mr. Fox, and Sir Cecil Wray, were candidates; and the poll continued till the 17th of May, when it was closed by the high bailiff, that he might make a return on the next day. At the close of the poll a scrutiny was demanded by the losing candidate, Sir Cecil Wray, and granted by the high bailiff. On the next day he made a special return; which, after stating all
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40 Journ.
p. 13.

the circumstances, goes on; “ and that, on the
 “ said final close of the poll, a scrutiny was duly
 “ demanded on behalf of the said Sir Cecil
 “ Wray, which scrutiny the said bailiff has grant-
 “ ed, *for the purpose of investigating the legality of*
 “ *the votes more accurately than could be done upon*
 “ *the said poll**; and the said scrutiny so granted
 “ is now pending and undetermined; and, by
 “ reason of the premises, the said bailiff humbly
 “ conceives he cannot make any other or further
 “ return to the said precept than as hereinbefore
 “ is contained, until the said scrutiny shall be
 “ determined, which he fully intends to proceed
 “ upon with all practicable dispatch.”

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On the 25th of May, 1784, Mr. Fox petition- 40 Journ.
 ed against the election, praying that the bailiff P. 13.
 might be compelled to return him, having a
 majority on the poll. A petition of divers elec-
 tors was also afterwards presented.—2d June, a Ib. p. 68.
 counter petition of certain electors was presented;

* The reason here given for granting the scrutiny, seems to be somewhat deficient; for it is not even suggested, that the high bailiff suspected there had been a single bad vote received. Every returning officer in England, however scrupulously the poll has been conducted, might have the same excuse; and, if the protracting the election for Westminster was legal, the member for every populous district might have been excluded at the meeting of parliament, before the 25 Geo. III. c. 84. and perhaps might be excluded even *now*.

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praying

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27 Journ.
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40 Journ.
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F f

praying

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40 Journ.
p. 104.

praying the sheriff might proceed with the scrutiny. The House of Commons having made some progress in the consideration of these petitions, on the 8th of June, " the question being
" put, that, it appearing to this House, that
" Thomas Corbett, Esq. bailiff of the liberty of
" the city of Westminster, having received a pre-
" cept from the sheriff of Middlesex, for electing
" two citizens to serve in parliament for the said
" city, and having taken and finally closed the
" poll on the 17th of May last, being the day
" next before the day of the return of the said
" writ, he be now directed forthwith to make
" return of his precept, and of members chosen
" in pursuance thereof," it passed in the negative. And the House then " ordered, that the high
" bailiff of the city of Westminster do proceed
" in the scrutiny for the said city with all practi-
" cable dispatch." And the speaker, by order of the House, acquainted him with that resolution.

Ib. p. 473.

1st February, 1785, the House being informed, that no certificate had been received of any return of members to serve in parliament for the city of Westminster, " ordered, that
" the high bailiff of the city of Westminster
" do attend this House upon Friday morning
" next, in order to give an account to the House
" of what he has done in pursuance of the reso-
" lution

“ lution of the House, communicated to him at
“ the bar, on the 8th of June last,”

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8th February, 1785.—The high bailiff gave
an account of what he had done, pursuant to the
above resolution; and Francis Hargrave and
Arthur Murphy, Esquires, also attending ac-
cording to order, were examined.

40 Journ.
P. 503.

“ 9th February 1785.—A motion being made, Ib. p. 503.
“ and the question being proposed, That it ap-
“ pearing to the House, that,” &c. in the pre-
cise words of the question that was negatived on Pa. 434
the 8th of June preceding, “ an amendment
“ was proposed to be made to the question, by
“ leaving out from the first word, “ That,”
“ to the end of the question, and inserting the
“ words, “ the speaker do acquaint the high
“ bailiff, first, That he is not precluded by the
“ resolution of this House, communicated to
“ him on the 8th of June last, from making
“ a return, whenever he shall be satisfied in
“ his own judgment that he can do so; and,
“ secondly, That this House is not satisfied that
“ the scrutiny has been proceeded in as expe-
“ ditiously as it *might have been*; that it is his
“ duty to adopt and enforce such just and rea-
“ sonable regulations as shall appear to him
“ most likely to prevent unnecessary delay in
“ future; that he is not precluded from so
“ doing, by the want of consent of either party;

F f 2

“ and

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40 Journ.
p. 509.

“ and that he may be assured of the support of
“ this House in the discharge of his duty,” in-
“ stead thereof. An amendment was proposed
“ to be made to the said proposed amendment,
“ by inserting, after the words “ might have
“ been,” these words, “ although the high bai-
“ liff and Mr. Hargrave have informed the
“ House, that there has been no culpable delay,
“ nor has there been any practicable plan sug-
“ gested for carrying it on with greater expedi-
“ tion.” And the question being put, that those
“ words be there inserted, it passed in the
“ negative.” And the main question so
amended being carried, the speaker, by order of
the House, acquainted the high bailiff with the
resolution.

Ib. p. 577.

Pa. 434.

Pa. 435.

3d March 1785.—The same resolution *ver-
batim*, which had been negatived on the 8th of
June, 1784, and had been lost by an amendment
on the 9th of February, 1785, as before stated,
was moved, and carried, and the high bailiff
directed forthwith to make a return. Then a
motion was made for expunging the said proceed-
ings of the 8th of June, in the last parliament,
from the Journal of the House; and, after the
previous question of adjournment had been pro-
posed, and withdrawn, a debate arose in the
House upon the motion for expunging, and was
adjourned. On the 9th of March, 1785, that

Ib. p. 624.

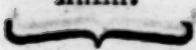
debate was resumed; and “ then the question
“ being put, that the said proceedings of the 8th
“ day of June, in the last session of parliament, be
“ expunged from the Journal of this House,”
there were, upon a division, 137 for expunging,
and 242 against it.

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finish.

In the mean time, viz. on the 4th March, 1785, the high bailiff, in pursuance of the above resolution, made a return to his precept, stating, that he had proceeded in the scrutiny, and continued the same, by divers adjournments, until the 3d of March, when, upon receipt of the order of the House, he cast up the votes as they remained upon the poll, and, after deducting those disallowed on the scrutiny, there were for Lord Hood, &c. “ Now, therefore, for a final
“ return to the said precept hereunto annexed,
“ the said bailiff, in obedience to the said order,
“ doth hereby certify, that, *according to the above*
“ *state of the numbers*, the said Right Honourable
“ Sir Samuel Hood, Baronet, Baron Hood, of
“ the kingdom of Ireland, and the said Right
“ Honourable Charles James Fox, are duly
“ elected citizens to serve in the present parlia-
“ ment for the said city of Westminster, accord-
“ ing to the exigency of the said precept, and
“ the writ therein recited,” &c. The House
ordered the return to be annexed to the writ for
the county of Middlesex.

40 Journ.
P. 588.

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Mr. Fox afterwards brought an action in the court of Common Pleas, against Mr. Corbett, the high bailiff of Westminster, for not having returned him in due time, so that the sheriff for the county of Middlesex might have made a return to his writ on the day appointed. The declaration contained several counts, and stated the issuing and delivery of the writ of summons to the sheriff of Middlesex, his making of a precept to the defendant; that the defendant, in pursuance of that precept, proceeded to the election of two burgesses for that city, and that the plaintiff was duly elected. The 8th count alleged, "that the defendant, not regarding the
" duty of his said office, but further contriving,
" and maliciously intending," &c. did not, after the election, and before the day of the return of the said writ, make known to the sheriff that the plaintiff was duly elected, &c.; but, on the contrary thereof, did "wilfully, unlawfully, maliciously, and contrary to the said duty of his
" said office, and contrary to the exigency, tenor,
" and effect of the said writ and precept, and
" without any just or reasonable cause whatsoever, grant a scrutiny of the votes given at
" the said election, to commence at the day of
" the return of the said writ, in the said writ
" mentioned," and did wilfully, &c. proceed in the said scrutiny, and continue the same until
long

long after the day of the return of the said writ; and, under colour of the said scrutiny so by him granted, proceeded on, and continued as aforesaid, wilfully, &c. delayed to return the said precept, whereby the plaintiff was, for a long time, hindered from coming to the said parliament, and obliged to lay out money, &c. This action came on to be tried at the sittings at Westminster-Hall, in Trinity Term, in the 26th year of the reign of the present King (19th June, 1786) before Lord Loughborough, and the jury gave a verdict for the plaintiff, with 2000*l.* damages. On the 21st of June a rule *nisi* was obtained to arrest the judgment; and a few days afterwards that rule was discharged, no cause being shewn, and final judgment entered up.—Thus we have the authority of one of the highest courts of justice to say, that, notwithstanding the resolutions of the House of Commons, the conduct of the high bailiff was not sanctioned by the laws.

The inconveniences to be dreaded from the doctrine of the Westminster case, if it should have ever been generally established and pursued, induced the legislature to pass the 25th Geo. III. c. 84. for regulation of polls and scrutinies; and, by the first section, the provisions of the 10th and 11th Will. III. cap. 7. requiring sheriffs and other officers to make a return of members on the day appointed for the

Scrutiny
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meeting of the parliament, was extended to returning officers of all descriptions; and, after having enacted, that the returning officer might proceed upon the scrutiny, it goes on, " but so
" as that in all cases of a general election, every
" returning officer or officers having the return
" of a writ, shall cause a return of a member
" or members to be filed in the crown-office
" on or before the day on which such writ is
" returnable; and every other returning officer
" or officers acting under a precept or mandate,
" shall make a return of a member or members,
" in obedience to such precept or mandate, at
" least six days before the day of the return
" of the writ by virtue of which such election
" has been made."

On a vacancy.

It remains to make a few observations upon the period to which a scrutiny may be protracted under a writ issued for the election of a member, in case of a vacancy during the sitting of parliament. The writ issued in such case differs most materially from that under which members are elected at a general election; it commands the sheriff to cause the member elected to come generally to the parliament, without specifying any particular time or place, and the return is to be certified to the King in Chancery *forthwith*. Here then, as far as depends upon the writ,

writ, the returning officer has a greater latitude; he is confined to no particular day, but, provided he is not guilty of wilful delay, he may consume any portion of time in deciding which of the candidates has the greatest number of good votes. So it stood upon the writ, and, until the late act (25th Geo. III. c. 84.) there was no positive law to restrain his pushing this inquiry to any extent. But the House of Commons has been ever jealous of the conduct of sheriffs in the return of writs, and watchful that their criminal neglect should not deprive any part of the kingdom of its representatives in parliament. The following cases will shew how strict the House has been in this particular.

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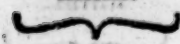
Caernarvonshire, 1st January 1640.—Ordered, that James Brinker, Esquire, high sheriff of this county, “be forthwith sent for as a delinquent, by the serjeant at arms attending on this House, to answer his neglect and contempt to this House and commonwealth, in not returning a knight and burgesses for that town and county, in *above a month* after the election was made; and to answer other misdemeanours, by him committed, in the carriage of that election.”

2 Journ.
P. 61.

Eye, 10th November 1675.—Information being given to the House, that the election of a burgess for this borough had been over *a week* before,

9 Journ.
P. 371.

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when to
finish.



9 Journ.
p. 600.

Ib. p. 620.

before, and the sheriff had hitherto neglected to make a return, "to the injury of the member " elected," he was ordered to be summoned to attend at the bar of the House, to give an account of his neglect; but, the day after, the messenger was recalled.

Norfolk, 22d April 1679.—The House having declared the election void, ordered a new writ. 12th May, the House being informed that the high sheriff *refused* to make a return of the writ, he was sent for in custody, "for not " returning the writ for electing of two knights " of the shire to serve in this present parlia- " ment for the said county." This, it may be observed, was upon a vacancy, and therefore no precise day was fixed for the return; and, as only *twenty days* had elapsed after it issued, we may presume that a county court had intervened, at which he had refused to proceed to the election.

The act of the 10th and 11th Will. III. c. 7. requires sheriffs and other officers, to whom writs for the election of members were directed, in case of vacancies, to make their returns "with " all convenient expedition, not exceeding four- " teen days *after any election* made;" but no time whatever was limited for the duration of scrutinies, or the finishing of the elections. In this respect the act made no alteration; both
sheriffs

sheriffs and returning officers acting under precepts, were left precisely in the same situation as at common law, and so they remained till the 25 Geo. III. c. 84.

Scrutiny
when to
finish.

Leftwithiel, 28th January 1709.—Complaint being made, that “although the election for

16 Journ.
p. 285.

“this borough was upon the 10th instant, yet “no return is made thereof,” the high sheriff of the county of Cornwall was ordered to attend, by himself or his deputy, to give an account why the return was not made.—1st Fe-

Ib. p. 289.

bruary. The House being informed no return was yet made, *the statute 10th and 11th Will. III. c. 7. was read*, the sheriff or his deputy was again ordered to attend.—15th Febru-

Ib. p. 314.

ary. The sheriff's deputy, &c. attended and were examined, and it appeared the mayor sent the return the afternoon of the election day; whereupon the high sheriff himself was ordered to attend.—1st March. He attended, and gave a satisfactory account of the matter, and was discharged from further attendance.

Ib. p. 342.

Westminster, 1749.—Upon a vacancy, occasioned by Lord Trentham accepting of a place, a writ issued on the 16th November 1749.

The day of election was the 22d of November; and Lord Trentham and Sir George Vandeput were candidates. Lord Trentham had a major-

26 Journ.
p. 18.

ity

Scrutiny
when to
finish.

25 Journ.
p. 1010.

Ib. p. 1015.

rity on the poll; but Sir George Vandeput demanded a scrutiny, which lasted upwards of 90 days. On the 22d February 1749, after three months had elapsed from the issuing of the writ, and no return filed, notice was taken in the House of the deficiency; and the proper persons through whose hands the writ or the return ought to pass, were ordered to attend.—23d February 1749. They all attended, and were examined; and the high bailiff of the city of Westminster “being examined at the bar, acquainted the House, that he is now in the execution of the said precept; that he had all along endeavoured to avoid all unnecessary delay therein; and that if some delay has happened in the scrutiny of the poll taken at this election, which he is now proceeding upon, it has been such only as he did not think he had sufficient powers to prevent or remove.” And afterwards the speaker (by direction of the House) “recommended some particulars of his duty to him, and acquainted him, that if he met with any thing to obstruct him therein, which he could not prevent, he should apply to the House upon it, and might be assured of the support of the House in the discharge of his duty; and that the House expected he would take care, in general, to expedite

“ expedite the election as much as possible.
 “ Upon which, he expressed his great readi-
 “ ness to conform himself to the directions of the
 “ House, and said, that he would use his best
 “ endeavours to expedite the election, and hoped
 “ to perform his duty in general to the satis-
 “ faction of the House.”

Scrutiny
when to
finish.

On the 12th April 1750, the parliament was prorogued, and did not meet till the 17th January 1750. During the recess, the high bailiff had closed the scrutiny, and returned Lord Trentham. Sir George Vandeput, and certain electors, petitioned; but afterwards withdrew their petitions.

On the 28th January 1750, it was “ ordered, ^{26 Journ.}
 “ that Peter Leigh, Esquire, high bailiff of the ^{P. 23.}
 “ city of Westminster, do attend this House
 “ immediately, in order to give the House an
 “ account of what he did, in pursuance of the
 “ directions given to him by this House, upon
 “ the 23d day of February last, in relation to
 “ the execution of the precept issued to him in
 “ pursuance of the said writ.” He was accord-
 “ ingly called in, and examined in relation to what
 “ he had done in pursuance of the said directions;
 “ and having, in the course of his examination,
 “ alledged, that the said election was protracted
 “ by an affected delay,” and being asked, by whom
 “ the election was protracted, and by what means?
 “ he

Scrutiny
when to
finish.

he named several persons, who were ordered to attend the House.

The delay occasioned by the scrutiny in this instance, might have convinced the friends of the constitution of the danger of trusting to sheriffs and other returning officers an authority which they could never want a plausible pretence to exercise, when instigated by partial or corrupt motives. But no attempt was made by the legislature to apply a remedy, until the 25th Geo. III. c. 84. s. 1. restrained the discretionary powers founded upon the indefinite terms of the writ, and enacted, that the returning officers for counties or cities and boroughs may proceed to a scrutiny; “ so that, in case of any election
“ upon a writ issued during a session or prorogation of parliament, and a scrutiny being
“ granted as aforesaid, then that a return of a
“ member or members shall be made *within*
“ *thirty days after the close of the poll*, (or sooner,
“ if the same can conveniently be done).”

Observation
on 25 G. III.
c. 84.

At the last general election, the singular situation of the city of Westminster, which, for several months, was deprived of representatives in parliament, while the returning officer was engaged in scrutinizing the votes he had admitted to poll, brought his conduct into public discussion, and introduced the subject of scrutinies

tinies to the consideration of the legislature. Some regulations, it was agreed by persons of all parties and descriptions, were necessary; and the 25th Geo. III. c. 84. was passed. That act has given a legal sanction to the power of returning officers to grant scrutinies, and has in some respects regulated them: but it offers only a partial remedy for the evil, and attempts to reform what it ought to have established *de novo*. If, in the wisdom of the legislature, it is thought fit that a returning officer should grant a scrutiny when "he shall deem it necessary," the public have a right to expect that he should be trusted with the necessary powers; if he is to preside at a court of justice, it ought to be regularly constituted. The ministerial nature of the office at common law renders the ingrafting of judicial powers a work of extreme difficulty; and two effectual remedies only present themselves, either to resort back to the principles of the common law, or at once to introduce the modern usurpation as a new system. Any partial attempt must necessarily be defective, and, instead of palliating, increase the evil.

Observation
on 25 G. III.
c. 84.

Soon after the Oxfordshire election, Lord Mansfield (then solicitor general) has been said to have undertaken the framing of a bill to regulate scrutinies; but, upon mature deliberation,

Observation
on 25 G. III.
c. 84.

tion, abandoned the design, feeling even his abilities unequal to the task.

It is highly probable, that the approaching general election may fully evince the insufficiency of the 25th Geo. III. c. 84; but it will be fortunate for the public, if that act is not productive of much greater mischief than it can possibly do good. Returning officers may now think they have a discretionary power to grant scrutinies without assigning any reasons, and from honest motives wish to have the evidence of witnesses under the sanction of *an oath*, which they cannot obtain upon the poll. But this is not all; the time limited for the duration of scrutinies * is vastly too long for most elections, and too short for others. If the returning officer should grant a scrutiny, it would be impossible for him to do his duty conscientiously before the return of the writ, for the counties of Lancashire, Yorkshire, Cheshire, &c.; it was found impossible, in fact, in the Oxfordshire election, and in the two cases of Westminster. In like manner, upon a vacancy, how can it be expected that the scrutiny for these places can be finished in 30 days! in Westminster, upon a former occasion, it lasted for 90,

* This time, in the case of counties at general elections, was limited by the 10 and 11 W. III. c. 7. as well as the 25 Geo. III. c. 84.

and

and at the late election it was unfinished after a lapse of several months.

Observation
on 25 G. III.
c. 84.

Thus the act excludes the larger districts from the possibility of prosecuting a scrutiny to conclusion, and confines its provisions to those places only where there is a small number of voters. The returning officer, by continuing the scrutiny to the last moment (and he is not deprived of the power of adjourning) may always put himself in a situation to make a double return, as was done for Oxfordshire, and thus exclude the members from sitting in parliament till the merits of the election are determined. In short, in consequence of this act, scrutinies will probably be more frequently demanded, and more readily granted, and of course the expences attending contested elections much increased. Returning officers may act partially and corruptly, with greater inconvenience to the public, and less danger of punishment to themselves; and the incompetency of their judicial powers to attain substantial justice remains nearly the same, while the restrictions of the act itself must often force them to be unjust.

The scrutiny being finished, the sheriff must make a return of the members who have a majority on the revised poll, within the time limited

Poll books
delivered to
clerk of the
peace.

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Poll books
delivered to
clerk of the
peace.

by law *. And, by the 5th section of the 10 Ann. c. 23. for preventing fraudulent conveyances at all elections of knights of the shire, " the said
" sheriff or returning officer shall, within the space
" of twenty days next after such election, faithfully
" deliver over, upon oath (which oath the
" two next justices of the peace, one of whom to
" be of the quorum, are hereby enabled and
" required to administer) unto the clerk of the
" peace of the same county, all the poll books
" of such respective elections, without any em-
" bezzlement or alteration; and in such counties
" where there are more than one clerk of the
" peace, then the original poll books to one of
" such clerks of the peace, and attested copies
" thereof to the rest, to be kept among the re-
" cords of the sessions of the peace in and for the
" said county."

2 Stra.
p. 1048.

In the case of the King and Davis (in the 9th of George the II^d.) in the Radnorshire election, the sheriff swore a clerk, and each of the candidates had two others, so that five polls were taken and delivered to the sheriff. He carried only that which was taken by his clerk, as being the original poll, and the others only

* By 7 and 8 W. 3. c. 25. s. 6. he is bound, after the election, under penalty of 500l. *forthwith* to deliver to such person *as shall desire the same*, a copy of the poll taken at the election, paying only a reasonable charge for writing the same.

checks;

checks; and insisted that the act, in requiring all the poll books to be lodged, meant only where the poll is taken at different booths, and all the books make one poll; but the court held, that all the books ought to have been carried in, and granted an information against the sheriff for not doing it. Sir John Strange adds this N. B. " Upon a reference to Mr. Attorney and " me, we reported for a *nolle prosequi*, it not " being a wilful if *any* mistake."

Poll books
delivered to
clerk of the
peace.

The following Heads of Enquiry were drawn up and circulated in 1784, by Mr. Wilkes's Friends, in order to give Effect to the Scrutiny granted at the Election for the County of Middlesex, but not proceeded on.

ENQUIRIES necessary to be made respecting each voter :

1. Whether the voter is a freeholder of the said county to the value of 40 s. a year, over and above all rents and charges, land-tax excepted ?

2. Whether he purchased his freehold ; and in that case, whether he hath been in actual possession, for his own use, for twelve months previous to the election, and whether the said estate has been assessed to the land-tax for twelve months before the said election ?

G g 2

3. Whether

3. Whether the estate for which he votes is not conveyed to him fraudulently, on purpose to qualify him to vote?

4. Whether he is twenty-one years of age?

5. Whether he has polled twice?

6. Whether more than one person has polled in respect of the same freehold, not having a joint interest?

7. Whether he is only mortgagee or trustee of the estate he votes for, and not in possession thereof?

8. Whether he is only mortgagor of such estate, or the person for whom the same is held in trust, and not in possession?

9. Whether he is a copyholder?

10. Whether the estate for which he votes has, for six calendar months next before the said election, been assessed towards the land-tax in the name of the voter, or in the name of the tenant actually occupying the same; or whether the premises have been assessed within two years in the name of the person or persons through whom the voter claims title?

11. If the voter has voted in right of his wife's dower, then whether the said dower is of the value of 40s. a year?

12. Whether the voter is in the actual receipt of the said dower?

13. Whether the estate, out of which the
dower

dower is payable, is rated to the land-tax in the name of the actual owner ?

14. Whether he is now, or has within twelve months before the election, been an officer concerned in charging, collecting, levying, or managing the duties of excise or customs, or the duties on salt, or on windows and houses, or the duties on stamps, or whether he is a distributor of stamps appointed by the commissioners ?

15. Whether he is a person employed under the post-master general, or his deputy, in receiving, collecting, or managing the revenues of the post-office ?

16. Whether he is captain, master, or mate of any packet or other vessel employed in conveying foreign mails ?

17. Whether he has received alms within twelve months before the said election ?

18. Whether he has received any promise or bribe of any kind for his vote ?

19. Whether he is an alien or foreigner ?

20. Whether he did poll at all, or may not have been personated ?

21. Whether the poll-clerk pursued the instructions given by the voter at the time of polling, or has taken his poll for the candidate whom he had polled for ?

A D D E N D U M.

TH E following resolution is inserted at page 168 ; but the importance of the case induces me to give the report more at large.

10 Journ.
P. 457.

Sandwich, 31st October, 1690.—The right of election was agreed to be in the freemen of this port, inhabiting within this port. Mr. Serjeant Thurbane having 225 votes, his election was not disputed. Mr. Brent had 124, and Mr. Michell 114. The two former were returned, and Mr. Michell petitioned. He insisted that four of those who voted for Mr. Brent were made free after the teste of the writ, that another was not an inhabitant within the port, and that five were servants. By this means the petitioner would have had an equal number of votes with Mr. Brent; but three of those objected to as made free after teste of the writ, were intitled to their freedom by birth; and at all events it was necessary to disqualify more to obtain a majority in his favour, and be seated; he therefore objected to more than 30 as almsmen, or receiving a charitable donative. But it appearing to the committee, that

that " freemen in general had always voted at
" elections of parliament men for the said port,
" the committee came to two general resolu-
" tions." The first resolution was, " that it is
" the opinion of this committee, that the free-
" men of the port of Sandwich, inhabiting within
" the said port, *although they receive alms*, have
" a right to vote in electing barons to serve in
" parliament;" the second, that Edward Brent,
Esquire, was duly elected. The first resolution
being reported, the question was put, that the
House do agree with the committee; it passed in
the negative: and yet, what is singular enough,
the House agreed in the second resolution by a
majority of *one*, (the numbers being 175 to 174)
that Edward Brent, Esquire, was duly elected.

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